

MEETING
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

HEARING ROOM A
CALIFORNIA ENERGY COMMISSION
1516 NINTH STREET
SACRAMENTO, CALIFORNIA

WEDNESDAY, JANUARY 10, 2001

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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMISSIONERS

William Keese, Chairperson

Robert Laurie

Michal Moore

Arthur Rosenfeld

Robert Laurie

STAFF

Eileen Allen

Merry Bronson

Bruce Cenicerros

Bill Chamberlain, Chief Counsel

Shahid Chaudhry

Dale Edwards

Susan Gefter

Steve Larson, Executive Director

Virginia Lew

Kae Lewis

Scott Matthews

Jeff Ogata

John Sugar

Stan Valkosky

Tony Wong

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APPEARANCES CONTINUED

ALSO PRESENT

Michael Carroll, Latham and Watkins

Christopher T. Ellison, Ellison, Schneider & Harris

Greg Fuz, City of Morro Bay

Matt Goldman, Livingston & Mattesich

Jane E. Luckhardt, Downey, Brand, Seymour & Rohwer

Gene Varanini, Livingston & Mattesich

Robert F. Williams, WTA

Bill Workman, City of Huntington Beach

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1 PROCEEDINGS

2 CHAIRPERSON KEESE: Call the meeting of the
3 Energy Commission to order.

4 Mr. Boyd, would you lead us in the pledge of
5 allegiance, please.

6 (Thereupon the Pledge of Allegiance was
7 recited in unison.)

8 CHAIRPERSON KEESE: Commissioner Laurie will be
9 joining us momentarily.

10 Consent Calendar, Item A has been moved to the
11 business meeting of January 24th. We have therefore on
12 the consent calendar Item B, La Paloma Generating Project,
13 Do I have a motion?

14 COMMISSIONER MOORE: Move for approval.

15 CHAIRPERSON KEESE: Motion, Commissioner Moore.

16 COMMISSIONER PERNELL: Second.

17 CHAIRPERSON KEESE: Second Commissioner Pernell.

18 All in favor?

19 (Ayes.)

20 CHAIRPERSON KEESE: Adopted 4 to nothing.

21 Item 2, Metropolitan Water District of Southern
22 California. Possible approval of contract 400-00-013 for
23 \$2 million dollars to continue the research and
24 demonstration of several innovative electro technologies
25 for water treatment and conservation.

1 Good morning.

2 MR. CHAUDHRY: Good morning, Commissioners. I'm
3 Shahid Chaudhry from the Program Planning and Process
4 Energy group.

5 The purpose of this request is to grant \$2
6 million to the Metropolitan Water District, under this
7 initial research and innovation program public energy
8 research and to continue working and to find -- continue
9 to refine and work on the membering technologies, which
10 has been developed in the previous phase of this contract
11 with the MWD.

12 CHAIRPERSON KEESE: Commissioner Laurie, Item
13 two, metropolitan Water District.

14 Any comments on continuation of the research
15 project?

16 COMMISSIONER PERNELL: Mr. Chairman, I had a
17 briefing on this item and I'm very comfortable with it.
18 It seems a worthwhile item to move forward. And with
19 that, I would move the item.

20 COMMISSIONER MOORE: Second.

21 CHAIRPERSON KEESE: Motion Commissioner Pernell,
22 second Commissioner Moore.

23 Any further conversation?

24 MR. BOYD: Mr. Chairman, a question of staff, if
25 I might?

1 CHAIRPERSON KEESE: Mr. Boyd.

2 MR. BOYD: I find this a very interesting and
3 intriguing project, which, of course, leads to a lot of
4 potentially positive outcomes. The subject of
5 desalination is not a new one to the State of California.
6 I was just wondering, you're calling upon a variety of
7 talented subcontractors, of course, here but do we reach
8 out and get advice or seek advice from our own Department
9 of Water Resources on this subject?

10 MR. CHAUDHRY: Well, Department of Water
11 Resources is not directly involved in this contract,
12 because this mainly deals with the water treatment, which
13 is imported through the Colorado River as well as this is
14 transported from San Joaquin, Sacramento Delta area.

15 But you know the different agencies, which are
16 involved in this contract, they do seek advice from
17 different departments from time to time on an as-needed
18 basis.

19 MR. BOYD: I'm just aware they have expertise in
20 this arena and they ran a plant decades ago, et cetera, et
21 cetera. I just hope and trust that maybe you seek some
22 technical input from them once in awhile on the project.

23 MR. SUGAR: My name is John Sugar with the Fish
24 and Sea Division. And I was involved in this project
25 before Mr. Chaudhry started with it. And in our initial

1 evaluation a copy went to the Department of Water
2 Resources. They reviewed it, commented on it and MWD has
3 agreed that they will keep DWR informed as this goes
4 along. As part of that, we helped form a consortium for
5 this project which includes both northern and southern
6 California water agencies, so that the results would be as
7 applicable across the State as possible.

8 MR. BOYD: Thank you.

9 CHAIRPERSON KEESE: Thank you.

10 Any public comment?

11 Seeing none, all in favor?

12 (Ayes.)

13 CHAIRPERSON KEESE: Opposed?

14 Adopted five to nothing.

15 Thank you.

16 Item 3, Innovative, Efficiency and Renewables
17 Element of the AB 970 Peak Electricity Demand Reduction
18 Program. Possible approval of grants totaling up to \$8
19 million to install a variety of electric demand reducing
20 equipment and renewable electric generation equipment.

21 COMMISSIONER PERNELL: Mr. Chairman.

22 Mr. Chairman, before I move this item, I'd like
23 to thank the dozen or so people who have worked overtime
24 especially during the Christmas holidays to help bring
25 these grant awards to you, specifically the Evaluation

1 Committee, the Grants and Loans staff, legal counsel and
2 numerous other energy efficiency division employees.

3 This has truly been a remarkable team effort here
4 and I want to thank all of those involved. And I would
5 ask Bruce to summarize the projects.

6 MR. CENICEROS: I'd be happy to do so. Good
7 morning, Mr. Chairman and Commissioners. First, a little
8 bit of background here. The Innovative Efficiency and
9 Renewables Programs is just one of six program elements of
10 the \$50 million AB 970 peak reduction program. This
11 element was designed to solicit innovative peak reduction
12 solutions from the market that were not anticipated by the
13 authors of AB 970, and also satisfies a part of the
14 statute that directs the Commission to provide incentives
15 for reducing the costs of renewable energy development.
16 It does both of those things.

17 This is the only element that involves a
18 competitive grant solicitation and therefore that's why
19 we're actually taking each specific grant recommendation
20 to you for your approval.

21 We had a total of 37 proposals. The 11 projects
22 listed in table one of your backup package represent the
23 projects that we feel will deliver the greatest and most
24 reliable peak demand impacts at the least cost by June 1st
25 of this year.

1 If you look at Table 2, that shows an additional
2 ten projects that also met our minimum criteria. And if
3 additional funds become available to augment the initial
4 \$8 million allocation, we may take some of these back to
5 you for your approval at that time.

6 I'll just briefly summarize the projects in table
7 1 now and can answer any questions you have about specific
8 projects after that.

9 There are five projects that involve renewable
10 electric generation. Project number one is a request by
11 San Joaquin Valley Energy Partners for \$2 million to
12 recommission a 22 megawatt biomass plant that was
13 mothballed in 1995 when the utility bought out their
14 standard offer contract. It hasn't been economical to
15 operate since then and they now need money to cover the
16 costs of recommissioning that plant.

17 Projects number 3 and 6 submitted by the County
18 of San Diego and Nove Investments Corporation requests
19 \$75,000 each to install micro turbines run on landfill
20 gas, methane gas, that will generate 300 kilowatts at each
21 site.

22 Project number 7 is a request by Pure Power
23 Energy Company for \$900,000 to install ethanol fueled
24 micro turbines in the Palm Springs area. And I need to
25 note that the table in your backup package has an error.

1 This is not a backup generator, but it will supply 3.6
2 megawatts directly to the grid.

3 Project number 11, the last generation project is
4 a request for \$2 million from Ralph's Grocery Company to
5 install backup generation that will run on biodiesel,
6 that's a derivative of recycled vegetable oil, when
7 dispatched by the ISO during Stage 2 or higher alerts.

8 Ralph's will curtail 500 kilowatts of the
9 building load at their headquarters and then run their
10 remaining demand from their backup generator and
11 disconnect it from the grid removing eight megawatts of
12 total load.

13 The other six projects will reduce demand. Start
14 with Project number 2 that is a \$2 million request from
15 Kmart Corporation to reduce the lighting load in 85 of
16 their stores in California by over a total of eight
17 megawatts. And they will be doing this by installing T-8
18 lamps and electronic ballasts on their floors.
19 Twenty-seven of those stores, I should note, are located
20 in the transmission constrained areas of San Diego and the
21 San Francisco Bay Area.

22 Projects 4 and 5 are requests by Berrenda Mesa
23 Water District and Lost Hills Water District to expand the
24 storage capacity of their off-stream reservoirs to allow
25 them to store sufficient water during the off-peak periods

1 to allow them to make their water deliveries exclusively
2 via gravity flow during the peak electric period, thereby
3 voiding 2.7 megawatts of peak pumping demand.

4 And the last two projects, projects number 8 and
5 10 are requests from two community colleges Los Angeles
6 Valley College and Mt San Antonio College for
7 approximately \$700,000 total to improve the efficiency of
8 their lighting, heating and cooling equipment and install
9 energy management systems to control their electric load.
10 These two proposals have the potential to eliminate 2.6
11 megawatts of electric load.

12 These projects fully subscribe the initial \$8
13 million allocation to the program. And furthermore, the
14 last project on our list, Ralph's Corporation, requires an
15 additional \$553,500 in order to fully fund their \$2
16 million request.

17 This amount happens to be available from surplus
18 funds from another AB 970 program element. So we'd like
19 to recommend adding this amount to the \$8 million,
20 bringing the total request to \$8,553,500.

21 Now, these applicants in total will contribute
22 about \$20 million of their own funds resulting in a 2.5 to
23 1 leveraging of private funds by the program, and all told
24 these projects will remove a total of 48.5 megawatts and
25 provide that demand relief to the California grade at a

1 cost on average of \$165 per kilowatt. The action that we
2 request today is to approve \$8,553,500 in grants to fund
3 the 11 projects shown on Table 2.

4 CHAIRPERSON KEESE: Thank you. Mr. Chamberlain,
5 I see on our agenda it's an \$8 million item. Do I just
6 announce it as a different figure, or do we --

7 CHIEF COUNSEL CHAMBERLAIN: Yes. That amount of
8 difference would not require you to renotice the matter.

9 CHAIRPERSON KEESE: All right. Do I have a
10 motion to approve \$8,553,500?

11 COMMISSIONER PERNELL: So moved, Mr. Chairman.

12 COMMISSIONER ROSENFELD: Second.

13 CHAIRPERSON KEESE: Motion Commissioner Pernell,
14 second Commissioner Rosenfeld.

15 MR. BOYD: Mr. Chairman?

16 CHAIRPERSON KEESE: Mr. Boyd.

17 MR. BOYD: Some observations and a question. One
18 on the biomass. I think many members of this panel know
19 how interested I am in reviving the biomass power plant
20 industry. And I'm glad to see that here. This sets quite
21 a precedent. We've been trying to induce these people
22 back into the market by increasing the floor and looking
23 at other economic incentives to get them to invest private
24 capital in bringing plants back on. This sets an
25 interesting precedent for participation, but that's just

1 an observation.

2 Number 11, the Ralph's Grocery Company project
3 bothers me in several ways or concerns me. I guess I just
4 have questions. You had two of them in here that were
5 indicated backup. You kind of corrected that. I saw the
6 value in backup generation.

7 But if I understood you right, this proposal is
8 to provide \$2 million of a total \$2.3 million project cost
9 to provide for a biodiesel fueled, in effect, backup
10 generation that I heard you say would be dispatched
11 during, what, Stage 2 perhaps by the ISO?

12 MR. CENICEROS: That's correct.

13 MR. BOYD: This sets an interesting precedent
14 with regard to anything with the word diesel in it for me.
15 And I wonder what the air quality -- I mean, we've been
16 debating for days, weeks and months now how to address our
17 current energy crisis. There have been lots of proposals
18 to use and dispatch diesel powered backup generation that
19 had been frowned upon pretty heavily by the
20 Administration.

21 Is there a very significant air quality
22 difference between biodiesel and straight diesel, because
23 all comparisons I've seen between diesel, uncontrolled,
24 partially controlled, fully controlled and everything else
25 practically today, the air quality impacts almost in order

1 of magnitude more severe when you start firing up diesel.

2 Now, for emergency backup generation, I
3 understand and appreciate that. For something that is
4 going to be dispatched, these days perhaps fairly
5 regularly, I'm kind of concerned with both the
6 precedent -- well, with the precedent and with obviously
7 the environmental consequences.

8 MR. CENICEROS: I don't personally know the
9 comparative emissions from regular diesel and biodiesel.
10 My understanding is biodiesel is a cleaner burning fuel.
11 And if you'd like us to assess that difference, we can do
12 that. I would note also that Ralph's submitted two other
13 proposals, also each for \$2 million that would reduce a
14 similar amount of load that use ethanol instead of
15 biodiesel, which indeed is a cleaner burning fuel than
16 diesel, regular diesel. And we could hold off on this one
17 and look into that if the Commission desires.

18 We have checked with the South Coast Air Quality
19 Management District about the permitting issues around
20 this. And basically they're permitted to operate 200
21 hours per year on a standard backup generation emergency
22 permit.

23 If biodiesel does meet the emissions limits for a
24 clean burning fuel that the South Coast AQMD has set, then
25 they would be almost unlimited in how much they could

1 operate that as a stationary generation source. So we can
2 look into that further if you desire.

3 MR. BOYD: Well, I'm quite -- because of the
4 precedent this established, because so many people have
5 been knocking on our collective doors of late with various
6 schemes, many of which include operation of diesel
7 generator systems, which have been, frankly, frowned upon,
8 even as late as yesterday, I would be reluctant to suggest
9 that you approve this until you really have the air
10 quality case documented and we're sure that South Coast,
11 ARB and then we're also sure of the policy ramifications
12 of dispatching such systems.

13 COMMISSIONER PERNELL: Mr. Chairman, I think Mr.
14 Boyd brings up an excellent point. I would just add that
15 my understanding of this biodiesel is that it's made out
16 of oil, vegetable oil.

17 MR. CENICEROS: Yes.

18 COMMISSIONER PERNELL: And I've been doing some
19 work in this area as it relates to natural gas GTL, which
20 is Gas To Liquids, natural gas being converted into diesel
21 fuel, which is a lot cleaner. And the article I read
22 where this was being done, I think it was back east, also
23 indicated that it was cleaner.

24 But if Commissioner Rosenfeld is agreeable with
25 this, we would take off Item 11 and do more research in

1 terms of air quality and perhaps bring it back if it
2 qualifies within the South Coast and, of coarse, ARB
3 criteria.

4 COMMISSIONER MOORE: Mr. Chairman?

5 CHAIRPERSON KEESE: Commission Moore.

6 COMMISSIONER MOORE: I understand that the maker
7 of the motion is preparing us to turn that around and
8 table it for a look at this. And I want to suggest that
9 Mr. Boyd is addressing a point that should be investigated
10 even more broadly in the context of diminishing quantity
11 and increasing prices for natural gas, which is the
12 alternative of choice in almost everyone of these cases.

13 I had occasion to be talking to one of my counter
14 parts in Alberta last night, talking about the unforeseen
15 price spike in Alberta natural gas futures and the
16 consternation that has accompanied it, along with some
17 speculation that perhaps they over estimated the fuel
18 strength, and that, in fact, we may not be 30 years out
19 from the time when the curve starts to dip down on natural
20 gas but, in fact, we may be on the point where the curve
21 is starting to dip down.

22 If that's the case, then alternatives like this
23 are going to be not only more attractive, but they're also
24 going to be things that we need to pursue.

25 So I guess if it looks as though I'm tossing up

1 yet another caution about the natural gas forecast that we
2 did, I am. And I would suggest that this has got to be
3 more and more central to our thinking in terms of
4 alternatives. So this should not just be done, I think,
5 in the context of its air pollution ramifications, but
6 also in terms of its cost effectiveness and ability to be
7 a substitute for other more common, or at least, more
8 acceptable forms of fuel generation at the current time.
9 Just a caution.

10 CHAIRPERSON KEESE: Thank you. What we have
11 before us then is a -- Commissioner Pernell has amended
12 his motion to the sum of 6,553,500 with the concurrence of
13 the second, Mr. Rosenfeld.

14 COMMISSIONER ROSENFELD: I concur.

15 CHAIRPERSON KEESE: And we are taking up in this
16 motion, items 1 through 10. Item 11 will be put over for
17 a subsequent meeting and to be taken up perhaps as a
18 single item, but in the broader context of an explanation
19 of the air impacts not only for this project but the
20 broader context of emissions out of diesel backup units.
21 Do you wish to limit, Mr. Boyd, that would operate during
22 Stage 2s or do you want to --

23 MR. BOYD: I just think the question -- the air
24 quality issue and the policy question dispatching backup
25 generators.

1 CHAIRPERSON KEESE: So if you will -- that's a
2 little broader than your charge here on this research and
3 development project. But if you'd work with other members
4 of staff and we'll cover that whole issue when you bring
5 this back before us.

6 COMMISSIONER PERNELL: Mr. Chairman, just a
7 matter of clarification.

8 CHAIRPERSON KEESE: Commissioner Pernell.

9 COMMISSIONER PERNELL: It sounds like I wouldn't
10 want to have Item 11, if, in fact, the research shows that
11 it is a cleaner burning fuel and that there is no adverse
12 emissions, I wouldn't want to have it tied to a further
13 broader research, because it would take too long to get it
14 back.

15 CHAIRPERSON KEESE: We'll have the explanation
16 when it's brought back. We'll have an explanation of what
17 staff feels its impacts are and whether this --

18 COMMISSIONER PERNELL: On item 11.

19 CHAIRPERSON KEESE: We don't have a week for the
20 research, but we'll have an explanation of --
21 Mr. Matthews.

22 MR. MATTHEWS: We're trying to get these projects
23 delivered by June 1st and I would recommend that we put it
24 over till next business meeting and come back at that time
25 with our research. And, hopefully, you'll see that this

1 is a good project. And if not, then we'll substitute
2 another one. But we need to keep moving on delivering
3 this.

4 CHAIRPERSON KEESE: Put this over till the 24th,
5 Item 11 over till the 24th. We have a motion on number 1
6 through 10.

7 All in favor?

8 (Ayes.)

9 CHAIRPERSON KEESE: Opposed?

10 Adopted five to nothing.

11 Thank you.

12 MR. CENICEROS: If I could just get a little bit
13 more clarification on your direction here. If we find
14 that biodiesel is a significantly greater pollutant than
15 say ethanol, which also has submitted proposals for --

16 CHAIRPERSON KEESE: When you bring this back
17 before us, we'd like you to give us an analysis of what
18 you believe the air emissions impacts of biodiesel are.

19 CENICEROS: Would you like to compare that --

20 CHAIRPERSON KEESE: In a general context and
21 present it for us.

22 CENICEROS: We'd be happy to do that.

23 CHAIRPERSON KEESE: And if there's subsequent
24 research, you can do that later. But bring the project
25 back for us with an explanation of the air impacts of

1 biodiesel.

2 CENICEROS: Okay, thank you, Mr. Chairman and
3 Commissioners.

4 CHAIRPERSON KEESE: Thank you.

5 Item 4, energy Conservation Assistance Account.
6 Possible approval of a \$153,084 loan to the City of
7 Pasadena converting its red and green traffic signals to
8 those using light emitting diodes. We'll also take up
9 Item 5, possible approval of a \$23,077 loan to the City of
10 Sebastapol for converting its red rights, et cetera. And
11 Item 6, possible approval of a \$226,048 to loan to the
12 City of Palm Springs to convert its lights to light
13 emitting diodes.

14 COMMISSIONER PERNELL: Mr. Chairman, you have
15 before you, again, items 4, 5 and 6. And we've been
16 through this once before. These are loans with a payback
17 of not more than five years, but we do have a
18 representative here to discuss them, if the Commission so
19 desires.

20 CHAIRPERSON KEESE: I just have one. Let me ask
21 a question and perhaps that's all we need. These loans
22 are in conjunction with grants that are also taking place?

23 MS. BRONSON: Yes, they are.

24 CHAIRPERSON KEESE: So our grant program is
25 funding a portion of these. Our loan portion -- the loan

1 program is funding another portion?

2 MS. BRONSON: Yes, it is.

3 CHAIRPERSON KEESE: I welcome a motion.

4 COMMISSIONER PERNELL: Mr. Chairman, I would move
5 items 4, 5 and 6?

6 COMMISSIONER ROSENFELD: Second.

7 CHAIRPERSON KEESE: Motion by Commissioner
8 Pernell, second by Commissioner Rosenfeld.

9 Any other discussion?

10 All in favor?

11 (Ayes.)

12 CHAIRPERSON KEESE: Opposed?

13 Adopted.

14 Thank you.

15 COMMISSIONER PERNELL: Great presentation.

16 (Laughter.)

17 CHAIRPERSON KEESE: Item 7, Local Jurisdiction
18 Loan Accounts. Possible approval of a \$158,000 loan to
19 the City of Oakland for the installation of energy
20 efficiency improvements to the central cooling plant at
21 the Oakland Museum of California.

22 COMMISSIONER PERNELL: Mr. Chairman, this is an
23 item that I am pleased to move. It allows the CPUC and
24 Energy Commission to work together on a project for the
25 City of Oakland. The CPUC will be contributing \$291,000,

1 and the CEC will be contributing \$158,000 and it will help
2 reduce the City of Oakland's peak summer load by 110
3 kilowatts.

4 So just before we go forward with the staff
5 presentation, I just wanted to make that point that again,
6 this is a great opportunity for us to work with the CPUC
7 and help one of our major cities in the State.

8 CHAIRPERSON KEESE: Thank you. A brief
9 explanation here.

10 MR. WONG: Good morning, Commissioners. Today
11 I'm requesting the Commission to approve a local
12 jurisdiction loan of \$158,000 to the City of Oakland to
13 replace four existing chillers with a very high efficiency
14 variable speed drive chiller and cooling tower. The
15 central program organization is estimated to save the City
16 about \$40,000 annually in reduced electricity costs. That
17 will result in a four-year payback.

18 The Efficiency Committee approved the staff
19 request and recommend to move this item for the full
20 Commission approval today.

21 CHAIRPERSON KEESE: Thank you. We're giving a
22 loan and that will be paid back. Is the PUC giving a loan
23 or is that a grant?

24 MR. WONG: It's a grant. It's an incentive
25 program, \$291,000.

1 CHAIRPERSON KEESE: Okay. Do we have a motion?

2 COMMISSIONER PERNELL: Mr. Chairman, I so move.

3 COMMISSIONER ROSENFELD: Second.

4 CHAIRPERSON KEESE: Motion by Commissioner

5 Pernell, second by Commissioner Rosenfeld.

6 Any other comments?

7 Public comment?

8 All in favor?

9 (Ayes.)

10 CHAIRPERSON KEESE: Opposed?

11 Adopted five to nothing.

12 Thank you.

13 Item 8, Jones and Stokes. Possible approval of

14 an expert witness contract 700-98-012, Amendment 4, to

15 provide an additional \$9,775 to extend the contract term

16 for the completion of the original and new contract task

17 for the Metcalf Energy Center project.

18 COMMISSIONER LAURIE: I move the recommendation.

19 CHAIRPERSON KEESE: Motion Commissioner Laurie.

20 COMMISSIONER MOORE: Second.

21 CHAIRPERSON KEESE: Second Commissioner Moore.

22 Any further discussion?

23 All in favor?

24 (Ayes.)

25 CHAIRPERSON KEESE: Opposed?

1 Adopted five to nothing.

2 Thank you.

3 Item 9, The Morro Bay Power Plant Project.

4 Possible approval of the Executive Director's Data
5 Adequacy Recommendation for the Morro Bay Power Plant
6 project application for certification.

7 MS. LEWIS: Good morning. At the business
8 meeting on December 6th, eight of the 20 technical areas
9 of Morro Bay's application for certification were
10 determined to be inadequate.

11 Since that time, Duke has provided staff with an
12 information supplement which contains the data that we
13 requested. And so we're not recommending that the
14 application be considered adequate.

15 In the revised adequacy process, we did receive
16 some public comment. But we feel that all of those
17 comments can be handled in the next phase, the discovery
18 phase, of the AFC. In addition, we've worked with other
19 agencies, including the City of Morro Bay. And they may
20 wish to make some comments today about this process.

21 Thank you.

22 CHAIRPERSON KEESE: Thank you. I see the
23 applicant is here. Let me just ask, do we have any other
24 parties, who wish to speak to this issue?

25 All right. Why don't we take you first.

1 MR. FUZ: Good morning, Mr. Chairman.

2 CHAIRPERSON KEESE: Mr. Fez?

3 MR. FUZ: Pardon me?

4 CHAIRPERSON KEESE: Is it Fez?

5 MR. FUZ: Fuz. Good morning, Mr. Chairman and
6 members of the Commission. My name is Greg Fuz, Public
7 Services Director with the City of Morro Bay. I'd like to
8 take this opportunity to reflect briefly with you on the
9 importance of this moment, both for the city of Morro Bay
10 and the people of the state of California.

11 This is more than just a routine milestone in a
12 lengthy process to review just another power plant. By
13 your action today in accepting the Morro Bay Power Plant
14 project as data adequate, the California Energy Commission
15 is now becoming a full partner in the unique process that
16 began last year between the City of Morro Bay and the
17 applicant, Duke Energy, to work together to develop the
18 possible project for this site.

19 What makes this project so different? The
20 project proposes to entirely replace a massive 1950s/60s
21 generation facility that has dominated the landscape of
22 the central coast and to replace that with a
23 state-of-the-art low-profile facility.

24 When you visit the site in the near future and
25 examine the before and after photo simulations of the

1 project, I'm sure you'll share the astonishment with the
2 change compared to the before and after. In contrast with
3 the applicant's original proposal last year, this project
4 is also different in that it now provides twice the new
5 state-of-the-art generation in half the time that was
6 originally proposed. That's good for both the State of
7 California and in terms of conserving scarce natural gas
8 resources by substantially increasing the operating
9 efficiency of the Morro Bay Power Plant.

10 This project is different in that it includes
11 revenue guarantees for the City of Morro Bay; cost
12 reimbursement provisions for city public service impacts;
13 it proposes acquisition of a key piece of privately owned
14 property between the power plant site, Morro Rock, the
15 embarcadero and the beach; it includes commitments to
16 share implementation of the City's waterfront master plan;
17 it includes significant new coastal access opportunities
18 through and around the plant site; and it proposes
19 dedication of substantial areas of the project site for
20 resource protection.

21 All of this was accomplished through the
22 Memorandum Of Understanding between Duke and the community
23 of Morro Bay, that established as a goal, a fundamental
24 goal, development of a project that both Duke and the city
25 can support.

1 Finally, what may be unprecedented for your
2 commission is that at this early stage in your review
3 process, as a result of all these preliminary efforts,
4 more than 60 percent of the voters of Morro Bay and a
5 November advisory ballot measure expressed their support
6 for the project concept.

7 Have all issues been resolved? No. From the
8 City's standpoint, there are certain details that remain
9 to be worked out in key areas such as traffic, cultural
10 resources, water, facility closure, completing acquisition
11 of the key parcel I referred to earlier, preparing a
12 long-term plan for the site and adjoining lands, and, of
13 course, mitigation of any potentially significant
14 environmental impacts.

15 The City of Morro Bay is committed to continuing
16 to work diligently with your Commission, staff and Duke to
17 resolve these remaining issues expeditiously so that the
18 best possible project for both the residents of Morro Bay
19 and the people of the State of California can move forward
20 through the CEC process.

21 We look forward to hosting the Commission and
22 your staff next month in Morro Bay and are happy to
23 facilitate any meeting places and accommodations that you
24 may need.

25 Thank you.

1 CHAIRPERSON KEESE: Thank you very much. Do we
2 have any other public speakers on this issue? Did you
3 wish to oppose this, Mr. Ellison? You're not going to
4 oppose the motion, are you?

5 MR. ELLISON: No, we certainly do not oppose
6 this. We welcome the staff's recommendation and we
7 appreciate the comments that Mr. Fuz gave.

8 CHAIRPERSON KEESE: Thank you. Why don't we take
9 this and then we'll give you a chance to speak.

10 COMMISSIONER MOORE: Move the Executive Officer's
11 recommendation.

12 CHAIRPERSON KEESE: Motion by Commissioner Moore.

13 COMMISSIONER PERNELL: Second.

14 CHAIRPERSON KEESE: Second by Commissioner
15 Pernell.

16 All in favor?

17 (Ayes.)

18 CHAIRPERSON KEESE: Opposed?

19 Adopted five to nothing.

20 Mr. Ellison, do you wish to speak?

21 MR. ELLISON: You have a long agenda today as you
22 often do, and so I will simply say again, we appreciate
23 the staff's recommendation. We appreciate comments of Mr.
24 Fuz and we look forward to working with the Commission and
25 with the City as we move forward on this project.

1 CHAIRPERSON KEESE: Thank you.

2 MR. BOYD: Mr. Chairman, brief comments if I
3 might.

4 CHAIRPERSON KEESE: Mr. Boyd.

5 MR. BOYD: I'm delighted with the enlightened
6 view of the people of Morro Bay about the needs of our
7 society for energy and the need to augment the supply of
8 energy both to meet that demand as well as to maybe
9 address the current price issue. They seem more
10 enlightened than perhaps other communities we're familiar
11 with and I appreciated their statements.

12 CHAIRPERSON KEESE: Thank you.

13 Item 10, Morro Bay Power Plant Project Committee
14 assignment. I'll entertain a motion that Commissioner
15 Moore be the presiding officer and Commissioner Keese be
16 the second on the Morro Bay Power Plant.

17 COMMISSIONER LAURIE: So moved.

18 COMMISSIONER PERNELL: Second.

19 CHAIRPERSON KEESE: Motion Commissioner Laurie,
20 second Commissioner Pernell.

21 All in favor?

22 (Ayes.)

23 CHAIRPERSON KEESE: Opposed?

24 Adopted.

25 Thank you, Mr. Ellison.

1 Item 11, Huntington Beach Generating Station
2 Retool Project. Possible approval of the Executive
3 Director's data adequacy recommendation for the Huntington
4 Beach Generating Station Retool Project Application for
5 Certification.

6 Wow, we have abandonment.

7 (Laughter.)

8 STAFF COUNSEL OGATA: Good morning,
9 Commissioners. My name is Jeff Ogata, I'm staff counsel.
10 I'm working on Huntington Beach. We have a project
11 manager.

12 CHAIRPERSON KEESE: Good morning, we have the
13 Huntington Beach before us.

14 PROJECT MANAGER ALLEN: I apologize,
15 Commissioners. We had a question from the Governor's
16 office about the cost of installing SCR on the existing
17 power plant. So I confess that I'm responsible for
18 pulling Mr. Blackford, representing AES Huntington Beach,
19 out of the room, because he's an expert on that.

20 Thank you for your indulgence.

21 The Huntington Beach --

22 CHAIRPERSON KEESE: Do we -- should we hold this
23 off? Should he be here for your discussion?

24 PROJECT MANAGER ALLEN: Yes.

25 CHAIRPERSON KEESE: So it would be appropriate to

1 postpone this for awhile. Let's postpone this item
2 temporarily, is that a good idea?

3 Well, he's here.

4 All right. We'll go forward.

5 PROJECT MANAGER ALLEN: Good morning,
6 Commissioners. I'm Ed Blackford. I'm the site manager at
7 AES Huntington Beach.

8 I'm here to speak briefly about the proposed
9 retool project. AES has had a presence on the west coast
10 for over a decade. We started out with a small facility
11 in the Santa Clarita area. And we increased our presence
12 by the purchase of three plants from Southern California
13 Edison in 1998, one of which was the Huntington Beach
14 facility.

15 We purchased those plants, and particularly
16 Huntington Beach, with the prospects of repowering the
17 facilities. With the events of the past year, we were a
18 little bit out in front of seeing this current crisis
19 coming, and we began looking at two units at Huntington
20 Beach, Units 3 and 4. They had been retired in 1995 by
21 Southern California Edison and when we originally bought
22 the facilities, to be quite honest, our repowering
23 thoughts weren't centered around those two retired units.

24 But with the situations that have developed in
25 looking at the timing, we began early in 2000 of going

1 through a, more or less, record exercise, checking
2 operating records, maintenance records to see if there was
3 music and value to bringing these two units back on line.

4 That part of this study showed that there, in
5 fact, was a good reason to look further bringing these
6 units back on line. We then went into a second phase of
7 the project early in June, which we consider or call and
8 assessment phase, and that's continued up to the present,
9 where we actually began opening the equipment up, doing
10 inspections, doing testing to determine, in fact, what had
11 happened since the units had been shut down in 1995.

12 We call this a retool project because what we're
13 looking at is bringing these units back to their original
14 configuration. They provide 450 megawatts in total of
15 clean gas fired generation. We will be looking at
16 installing current state-of-the-art environmental controls
17 in the form of SCRs and also instrumentation.

18 We think this project makes a lot of sense.
19 We're returning the plant to its original configuration
20 under which it operated from roughly 1962 to 1995. These
21 boilers, Units 3 and 4, are of a technology that still
22 formed the backbone of the California fleet, plus they'll
23 be upgraded with, as I mentioned, the additional
24 state-of-art environmental controls.

25 We feel timing on this project is critical. If

1 you believe the ISO forecast, they're projecting this
2 coming summer a shortfall of anywhere between 3,000 and
3 4,500 megawatts depending on the weather. To the best of
4 my knowledge, there's only a 1,000 megawatt new plant
5 capacity that's going to be available by this summer.

6 In our efforts and assessments, we have found
7 that we can have these units available by June 1st.
8 However, we need to begin the active construction process
9 by March 1st. We think this justifies an expedited
10 process that's a unique asset if the infrastructure
11 exists. And as I mentioned before, we're returning the
12 plant to a configuration under which it operated for 30
13 years.

14 We had submitted the AFC on December 1st. We
15 appreciate the staff's efforts to review this over the
16 holiday period and ourselves with our environmental
17 consultant URS are currently working on the staff review
18 of their analysis to address all the issues that they have
19 presented that are necessary to that adequacy. We would
20 intend to address all of these issues that have been
21 identified at this point by a week from this Friday or
22 January 19th.

23 CHAIRPERSON KEESE: Thank you.

24 Staff?

25 PROJECT MANAGER ALLEN: Staff's recommendation is

1 that the Commissioners find the application data adequate
2 this morning -- data inadequate.

3 CHAIRPERSON KEESE: And does staff feel that
4 the -- I heard a suggestion for expediting this. Does
5 staff feel that we should take this up on the 24th?

6 PROJECT MANAGER ALLEN: It will depend on what we
7 receive as of the 19th. I can't confidently tell you yes,
8 at this point.

9 CHAIRPERSON KEESE: If we get adequate
10 information on the 19th, you'll be prepared to come to us
11 on the 24th?

12 PROJECT MANAGER ALLEN: I'm not sure we'll have
13 enough time. If we get it on the 19th, we'd have to
14 review it rapidly and then give you enough lead time to
15 take a look at it. I'm not sure that --

16 CHAIRPERSON KEESE: I'm just trying to clarify
17 things here. So the sooner you get the information, the
18 more likely it is that we'll be -- we'll reset this for
19 the 24th, but --

20 MR. BOYD: Mr. Chairman.

21 CHAIRPERSON KEESE: Mr. Boyd.

22 MR. BOYD: Can I get some kind of an idea of what
23 the inadequacy is. In the one-page document that comes in
24 my staff report, I can't glean what the problems are.
25 Well, let me -- one question at a time.

1 PROJECT MANAGER ALLEN: The AFC is inadequate in
2 all but two technical areas. So that's the array, ranging
3 from air quality, biology, water resources. And some will
4 be easy to remedy, and others are more complicated.

5 MR. BOYD: May I address a question to Mr. Allen.

6 Did I get some kind of a message in your
7 continuing reference to the fact that this is being
8 restored to the way it operated for 30 years other than
9 the addition of SCR? Is there some kind of a hint there
10 that we really shouldn't be facing the problems that
11 you're facing?

12 PROJECT MANAGER ALLEN: I'm Ms. Allen. He's Mr.
13 Blackford.

14 MR. BOYD: I'm sorry, Mr. Blackford. My
15 apologies.

16 MR. BLACKFORD: I would hope so. Based on the
17 existing infrastructure, and as I mentioned, the
18 restoration of the unit, plus upgrading to the
19 environmental, you know, state-of-the-art today, that does
20 make this project unique, so that it should be able to
21 pass through the process in a faster time frame, I would
22 hope.

23 MR. BOYD: Unfortunately, 30 years ago we had
24 about 15 million people in the State of California, et
25 cetera, et cetera.

1 CHAIRPERSON KEESE: Following up on Mr. Boyd's
2 question, are we talking about a one year AFC here?

3 PROJECT MANAGER ALLEN: Yes.

4 CHAIRPERSON KEESE: That does not sound like what
5 I heard from the applicant.

6 PROJECT MANAGER ALLEN: That's correct. We've
7 talked with the applicant about their interest in whether
8 they wanted to pursue the six-month process. And there
9 are information requirements that they were uncertain
10 about being able to comply for the six-month process, so
11 that leaves us with the standard 12-month process. And
12 the hope of every applicant, and I know every staff
13 member, is that we can complete the process ahead of the
14 12-month time frame. That's what we intend. So we're
15 left with the question mark there.

16 COMMISSIONER LAURIE: Mr. Chairman, if I may.

17 CHAIRPERSON KEESE: Commissioner Laurie.

18 COMMISSIONER LAURIE: When it comes to a
19 retooling, and I think we'll see, hopefully, more and more
20 of those, and the impact or the differentiation of
21 processes that such projects should follow currently,
22 there's really no discretion in the law allowing us to
23 discriminate one way or another on these kinds of
24 projects.

25 I would only note, however, that in doing the

1 environmental analysis, the dates from which the analysis
2 is taken is the current conditions on the ground, so it's
3 not a green field project. That should allow, in most
4 instances, not all, and maybe not even most, but certainly
5 some or perhaps many, an easier analysis because you're
6 not starting from zero, because there's already something
7 on the ground. It's even foreseeable that your
8 conclusions may reflect not only no environmental impact
9 but positive environmental impact. You don't know that
10 unless and until you study it. The point being that in
11 these kinds of projects your starting point is not green
12 field, your starting point is not barren lands, it's an
13 existing project. And it is from that point that you take
14 the proposed project and study the differences between the
15 two, which is less, normally, than when you start with an
16 empty piece of dirt.

17 COMMISSIONER MOORE: Mr. Chairman.

18 COMMISSIONER LAURIE: So that should permit, in
19 at least some or many or most of these kinds of cases, a
20 more timely analysis.

21 COMMISSIONER MOORE: Mr. Chair, I'd like to
22 amplify on what Commissioner Laurie was just saying, and
23 suggest that we may have an action that's technically not
24 in front of us today that is possible. It seems to me
25 that in listening to the applicant and listening to staff,

1 we have an absolutely fundamental disagreement about
2 whether or not we're going to proceed with any kind of
3 expedited review of this project or not.

4 The applicant clearly seems to be under the
5 understanding that, in fact, an expedited review is not
6 only possible, but it's in progress. And the staff is
7 operating, unless I'm missing Ms. Allen's point, under the
8 absolute clear understanding that we've embarked on a
9 one-year or thereabouts process which is our normal
10 process here.

11 It seems to me that if we assume Commissioner
12 Laurie is right, and, frankly, I do, and that we have an
13 existing situation here that is precedential and in a time
14 of fairly dire need where the regulations and
15 administrative structure were designed not to solve the
16 problem that we're faced with today, that we have the
17 opportunity to override that and take a fresh look at this
18 in applying some of our emergency rules that were never
19 taken up or completely taken up in the past, i.e. the
20 four-month review or the 90-day review for the peakers
21 that we never had come on.

22 It may be possible using the information that we
23 have, if the data is adequate, in fact, according to our
24 statutes, to determine that there are selective areas,
25 probably all centered around air quality, that can undergo

1 an expedited review, a very focused an intensive review
2 for an existing power plant. I mean it's almost beyond
3 the pale to imagine that this is something that hasn't
4 been studied or isn't known to the City of Huntington
5 Beach and/or South Coast very, very well in terms of its
6 characteristics.

7 And perhaps, and I'm turning, Mr. Chairman, to
8 plainly keep me out of trouble for the suggestion that I'm
9 about to make, but it seems to me we could do something
10 precedential here and take this up and assume not as staff
11 has done that it's automatically entered into a one-year
12 time frame, but that, in fact, the time frame is as short
13 as it needs to be to accommodate the major environmental
14 concerns to mitigate them and/or find that they cannot be
15 mitigated and terminate this project at the earliest
16 possible time. And it seems to me that might be able to
17 be done in the 90- to 120-day period.

18 So I ask Mr. Chamberlain if there is any
19 possibility that this Commission could take such an
20 action?

21 CHAIRPERSON KEESE: Might I ask Ms. Allen a
22 question before Mr. Chamberlain answers?

23 Will this require air district permits?

24 PROJECT MANAGER ALLEN: Yes.

25 CHAIRPERSON KEESE: Will it require Coastal

1 permits?

2 PROJECT MANAGER ALLEN: The Coastal Commission
3 needs to make a Notice Of Consistency with Determination
4 of Consistency with the coastal plan.

5 CHAIRPERSON KEESE: Are there any other
6 permitting agencies other than us that I'm missing, mostly
7 air and coastal?

8 PROJECT MANAGER ALLEN: We need to deal with the
9 water quality area and water supply.

10 CHAIRPERSON KEESE: In that context, Mr.
11 Chamberlain, recognizing we are putting this into what is
12 a formal 12-month process, what extent -- I think
13 Commission Moore was asking, to what extent can we shorten
14 that 12-month period recognizing the third parties
15 involvement.

16 CHIEF COUNSEL CHAMBERLAIN: I think there are
17 potentially some ways to shorten an AFC process if the
18 issues can be dealt with in a short period of time. But I
19 do think that, as I understand it, some of the more
20 difficult issues here relate to the fact that this project
21 uses cooling water -- direct one through cooling water.
22 And there are questions about what the impact is on the
23 water quality of the beach area there of that -- of
24 increasing that usage beyond what it's been for the last
25 five years.

1 COMMISSIONER MOORE: The last five years being
2 the shutdown period?

3 CHIEF COUNSEL CHAMBERLAIN: Being the period in
4 which these two units were not operable. And what they're
5 proposing to do is to make these two units operable, which
6 is to increase the amount of flow through that.

7 COMMISSIONER MOORE: Back to historical plans.

8 CHIEF COUNSEL CHAMBERLAIN: Right, back to
9 another prior to 1995. Although, actually, I'm not sure
10 if it might not even be higher than that. I don't know.

11 CHAIRPERSON KEESE: So what you're saying is that
12 we're not wedded to 12 months. We can expedite it if we
13 possibly can, recognizing that we are dependent on other
14 agencies' clearances to meet our time deadlines.

15 Mr. Therkelsen, did you want to add something?

16 DEPUTY DIRECTOR THERKELSEN: Good morning,
17 commissioners, Bob Therkelsen, Deputy Director. I agree
18 with Commissioner Laurie's comments that with respect to a
19 true repowering project that in some cases is easier
20 because there are existing facilities. One of the things
21 that's unique about this project is that it has not
22 operated for a number of years.

23 So when we consider the existing environment, the
24 existing environment is the fact that the facility stands
25 there, but has not been operational, so that's something

1 that will have to be taken into consideration.

2 Again, typically repowering projects can be
3 permitted faster. We have entered into discussions with
4 the applicant about the possibility of initiating this
5 project under a six-month AFC, rather than the 12-month
6 AFC that they filed. If they do want to switch to a
7 six-month process, then they will have to file some
8 additional information. There is nothing to preclude the
9 Commission in terms of going through a six-month AFC
10 process if the issues are easily resolved and we don't
11 have significant public opposition to be able to complete
12 the process in less than six months.

13 In the same fashion, there's nothing to preclude
14 the Commission in completing a 12-month process in less
15 than 12 months. Frankly, the shortest we've been able to
16 do that in the past has been eight months and that's with
17 a project that we were familiar with, an applicant that
18 was familiar with the Commission's process, and a
19 no-public opposition of any kind. We do understand that
20 the City of Huntington Beach has some concerns regarding
21 this project and that CURE may also have some concerns
22 regarding this project.

23 We have not had an opportunity to look at all of
24 the environmental issues. So for us to be able to commit
25 to you that we can do this in three months, four months or

1 six months, in my mind, is premature. We need to look at
2 the additional information that the Applicant is going to
3 be submitting to us and have further discussions with them
4 about the differences between the six-month and the
5 12-month process. We need to have further discussions
6 with the City of Huntington Beach to be able to really
7 give you a clear picture of the time frame.

8 Yes, our objective would be to facilitate the
9 permitting of particular repowering projects those
10 projects that's logical to get on line, fast.

11 CHAIRPERSON KEESE: Thank you. In order to
12 enlighten us a little further, then we should hear from
13 the City of Huntington Beach.

14 Mr. Bill Workman.

15 MR. WORKMAN: Good morning, Mr. Chairman and
16 members of the Commission. My name is Bill Workman. I'm
17 the Assistant City Administrator for the City of
18 Huntington Beach. The City of Huntington Beach would like
19 to be a full participant, to be fully involved throughout
20 the entire review of the AES application.

21 The facility has been a member of the community
22 for many years and we think that both the neighborhoods
23 and the general Huntington Beach community would like to
24 be heard with regards to a variety of issues.

25 Most specifically and important to the discussion

1 of the Commission is the new emerging data that's been
2 coming out over the last 90 days with regards to the
3 possible connections between AES's hot water generation
4 and bacteria flow coming from the outfall from the Orange
5 County Sanitation District.

6 Almost on a daily basis, additional research as
7 well as media coverage, as well as community concern is
8 being generated with regards to this new scientific data
9 that's coming out. We also have interest in reviewing
10 additional air quality requirements. We'd also be
11 interested in talking about the esthetics of the project.

12 I listened with interest as Morro Bay stood here
13 and talked about the contemporary state-of-the-art
14 facility that was being built there, low profile, bringing
15 on the most recent and latest technology in generation of
16 electricity. And I was jealous in listening to that
17 proposal, because we'd hope that, at some point in time, a
18 similar proposal would be coming forth from AES.

19 Also important as part of the discussion, while
20 the units have been shut down for five years, there's been
21 a change in both State law as well as status of the
22 project under CEQA. In the intervening last five years,
23 there's been a number of changes with State legislation
24 concerning beach contamination with regards to testing of
25 coastal waters, all directly related to the issues that

1 the City of Huntington Beach and the State beaches have
2 had to deal with over the last several summers, where
3 there's been beach closures due to bacteria found in the
4 waters.

5 We'd like to also get clarification as to what
6 the process is going to be. At one point I heard it was
7 expedited, then I heard it was six months, then I heard it
8 was 12 months. The City of Huntington Beach's response
9 and the neighborhoods's response is going to have to be
10 aligned with whatever process this application is going to
11 be reviewed by.

12 And then lastly, I'd just like to thank the
13 Commission staff for visiting with us in Huntington Beach,
14 providing us with good communication and facts about the
15 process and we look forward to working with the
16 Commission, the Committee of the Commission as well as the
17 staff in reviewing this application.

18 CHAIRPERSON KEESE: Thank you. I think what we
19 have in front of us is we have a recommendation for
20 inadequacy. And so we're going to move -- we're going to
21 take up a motion to accept that. And that would involve
22 putting this over to the 24th. I think we could lay all
23 the issues on the table. Is there any another issue
24 anybody believes that we should open before?

25 COMMISSIONER LAURIE: Mr. Chairman, I would have

1 to note for the record that I believe the recommendation
2 has to come from the Executive Director. Isn't that what
3 our statutes require and all of our documentation, not all
4 of our documentation, but we have staff recommendation and
5 so when we act, we need to be acting on the Executive
6 Director's recommendation and not staff's recommendation.

7 CHAIRPERSON KEESE: Let's hear from our fill-in.

8 CHIEF DEPUTY DIRECTOR SMITH: Kent Smith, Chief
9 Deputy Director for Steve Larson, Executive Director.
10 You've correctly characterized our recommendation.

11 COMMISSIONER LAURIE: Mr. Chairman, I would move
12 the Executive Director's recommendation.

13 CHAIRPERSON KEESE: Motion Commissioner Laurie.

14 COMMISSIONER MOORE: Second.

15 CHAIRPERSON KEESE: Second by Commissioner Moore.

16 All in favor?

17 (Ayes.)

18 CHAIRPERSON KEESE: Opposed?

19 Adopted five to nothing.

20 COMMISSIONER LAURIE: Mr. Chairman, may I comment
21 further on this point, please.

22 CHAIRPERSON KEESE: Yes, you may.

23 COMMISSIONER LAURIE: If it is good public policy
24 to promote repowering projects, and it may very well be,
25 there will be an examination of our process to see what it

1 is that we can do to promote such a positive policy.

2 Pursuant to a number of legislative actions and
3 our own actions, we have now twice or perhaps three times
4 sought to modify our regulations to make them more
5 expeditious. The last thing that occurred was through the
6 adoption of AB 970, a six-month process. That was
7 designed to carry out an intent of providing us a Negative
8 Declaration type of process.

9 It is not a straight out Negative Declaration
10 type of process, but it is what the Legislature deemed to
11 be appropriate for us at this given point in time. And
12 I'm not sure what more, under the given state of the law,
13 what we can do. But, again, if we determine as the Energy
14 Commission that good public policy dictates repowering,
15 then I think it's incumbent upon us to examine not only
16 our rules, but perhaps make other suggestions as to what
17 incentives can be provided for not only developers but
18 local jurisdictions to promote repowering of projects
19 within their own jurisdiction.

20 So I would like to take that issue under
21 consideration and agendize it for appropriate policy
22 consideration to be taken up in the near future. I
23 believe it to be an important question.

24 CHAIRPERSON KEESE: By the Siting Committee?

25 COMMISSIONER LAURIE: Yes.

1 COMMISSIONER PERNELL: Mr. Chairman, I would
2 certainly concur.

3 CHAIRPERSON KEESE: Commissioner Pernell concurs
4 with that. I think it's extremely important as these
5 discussions have been taking place in the press lately and
6 I'm sure they will be taking place in the special session
7 of the Legislature on energy. So I would concur and hope
8 we could do it promptly. And I'm sure staff has heard our
9 discussion and will be prepared to offer suggestions.

10 Any other comments?

11 Thank you.

12 MR. WORKMAN: Thank you.

13 CHAIRPERSON KEESE: Well, we will not appoint a
14 committee for the retooling, Item 12 is over also.

15 Item 13, Otay Mesa Generating Project.
16 Commission consideration of Intervenor Cabrillo Power's
17 interlocutory appeal of the Committee's evidentiary ruling
18 in AFC proceedings on the Otay Mesa Generating Project.

19 COMMISSIONER LAURIE: Mr. Chairman, this is an
20 appeal filed about the Otay Mesa case. The evidentiary
21 hearing has been closed on that case. It is now back in
22 front of the Committee consisting of Commissioner Pernell
23 and myself.

24 This is a request to mandate or order the
25 Committee to receive additional evidence. What I would

1 suggest is that Ms. Gefter, who is the Hearing Officer in
2 the case, briefly only introduce the matter and summarize
3 the issues and then provide the appellant, represented by
4 Mr. Varanini, to state his case followed by the applicant
5 in rebuttal, and then Ms. Gefter's closing comments. That
6 would be my recommendation, Mr. Chairman.

7 CHAIRPERSON KEESE: Thank you. That sounds like
8 a good schedule.

9 Ms. Gefter.

10 MS. GEFTER: To set the background prior to the
11 close of evidentiary hearings, Intervenor Cabrillo Power
12 requested additional hearing dates to present more
13 evidence on matters that were thoroughly litigated during
14 the course of the proceeding.

15 The Committee denied Cabrillo's request on
16 December 8th. And, again, on December 15th Cabrillo filed
17 two related interlocutory appeals of the Committee's
18 rulings. Cabrillo requests the Commission overrule the
19 Committee and reopen the record to allow more evidence on
20 the topics of system reliability and potential impacts to
21 regional air quality from fuel oil burns at the Encina and
22 South Bay plants in the event of gas curtailment, and this
23 would all occur in the San Diego region.

24 The Commission should be aware that Cabrillo was
25 involved in this case since the AFC was filed and had

1 ample opportunity to present testimony on these topics
2 during the hearings.

3 For the record, here is a brief chronology of
4 Cabrillo's participation in the case. The Committee has
5 asked me to present this for the record. The AFC was data
6 adequate on October 6th, 1999. Cabrillo attended the
7 informational hearing on November 15th. Cabrillo filed a
8 petition to intervene on December 7th 1999, asserting its
9 interest in presenting testimony and cross examination on
10 the issues relating to air quality, fuel supply and
11 transmission system engineering.

12 Cabrillo attended staff workshops throughout the
13 proceeding. Cabrillo attended Committee status
14 conferences throughout the proceeding. Cabrillo filed
15 written comments and actively participated at the July
16 25th committee conference on gas supply issues, which are
17 issues that Cabrillo wishes to add additional testimony to
18 the record.

19 Cabrillo timely filed a prehearing conference
20 statement and participated at the prehearing conference.
21 Prior to the start of evidentiary hearings, Cabrillo
22 requested a stay of the Committee to continue the
23 evidentiary hearing schedule. The Committee denied that
24 request. Cabrillo then appealed that denial to the full
25 Commission. The Commission upheld the Committee's denial

1 of staying the proceedings and we went forward with
2 evidentiary hearings.

3 Prior to evidentiary hearing, Cabrillo timely
4 submitted its list of witnesses and filed testimony. At
5 the evidentiary hearings, Cabrillo sponsored witnesses and
6 provided extensive evidence on issues of gas supply,
7 system reliability, and potential impacts of fuel oil
8 burns on regional air quality.

9 We had several days of evidentiary hearings. The
10 eight hour evidentiary hearing on November 14th was
11 devoted exclusively to issues of gas supply and system
12 reliability. Additional testimony on these same issues
13 was presented on November 20th. The all-day hearing on
14 November 21st was devoted to air quality and public
15 health. And additional testimony on the same topics was
16 presented at the hearing on December 4th.

17 The Committee permitted wide latitude to Cabrillo
18 to present and cross examine witnesses at each of these
19 hearings, to the extent that testimony became redundant.
20 Cabrillo was given ample opportunity to present all of its
21 evidence. The record contains a thorough examination of
22 the issues we believe.

23 The Applicant and staff filed briefs in
24 opposition to Cabrillo's appeals. They believe the record
25 is complete. Intervenor Duke Energy filed a brief in

1 support of the appeals.

2 As Commissioner Laurie indicated, the parties are
3 here to address the Commission. The Committee recommends
4 that the appeal be denied. And Mr. Varanini is here
5 representing the applicant.

6 CHAIRPERSON KEESE: Thank you.
7 Mr. Varanini.

8 MR. VARANINI: Thank you, Mr. Chairman. My name
9 is Gene Varanini. I'm with the law firm of Livingston And
10 Mattesich. And we are project counsel for Cabrillo and
11 have appeared in this proceeding representing Cabrillo
12 throughout.

13 I want to preface any detailed remarks with my
14 understanding of what our appeal is about. And I think
15 that Ms. Geffer has totally misrepresented our appeal.
16 What we have done -- our appeal is in two pieces. One
17 concerns an issue about the timing and the substantive
18 evidence to be presented in the proceeding. And the other
19 is about the Commission's jurisdiction on reliability and
20 what the Commission is supposed to do in its planning and
21 then its review of issues that are associated with
22 reliability.

23 Our understanding is there was an order of the
24 Committee during the proceeding that told us, effectively,
25 that certain issues related to reliability were not going

1 to be litigated and were not allowed to be litigated. And
2 any time we brought those issues up concerning
3 reliability, we were essentially admonished by the hearing
4 officer many times on her own sponsponte directive, with no
5 objection from the applicant, to cool it and to get off
6 the systems reliability issues, that it was not part of
7 your jurisdiction, it was not part of your mandate and
8 that the Committee did not want to hear testimony about or
9 questions particularly about the effect that this plant
10 will have on the San Diego area in terms of its domino
11 effect on reliability throughout San Diego.

12 So in the sense that the record is complete, that
13 the record -- that we had ample opportunity to provide
14 cross examination and to provide witnesses, we simply were
15 repulsed from being able to provide that information. Why
16 is it important? I mean, I can't imagine that the
17 Commission, at this stage in history, would take the
18 position that it doesn't have substantial jurisdiction
19 over reliability and reliability impacts of the power
20 plants that are being added to the system.

21 Effectively, our allegation was this, if you add
22 this particular plant to the San Diego system, given the
23 brittle nature of that system, bad wires, bad pipes, bad
24 everything, that essentially they could drive the system
25 into collapse while adding or attempting to add additional

1 megawattage. And that even on peak, and admitted by the
2 applicant, only 150 megawatts would come out of this plant
3 into the San Diego grid and the rest would go east, and it
4 would block power coming in from the east along the
5 interconnection path from Arizona.

6 We think that that issue alone is a significant
7 issue. It's part of your very reason to exist. And to be
8 perfectly honest, I was flabbergasted that that issue was
9 not fully and completely litigated. So that's one issue.

10 The other issue and the reason why we're asking
11 for more time is that throughout the proceedings, we
12 believe that gas availability and the gas system would be
13 a major issue in the case. The staff said it was in the
14 PSA. They said it up to the virtual time of the issues
15 conference, that it was a major issue in the case and
16 suddenly the gas issue went away.

17 Now, from our perspective, it caught us off
18 balance. We thought it was going to be done by the staff.
19 In a meeting with the staff and with the other parties,
20 the staff indicated it would analyze some of these issues,
21 and it just turned out that they didn't. And they
22 determined that the impacts of gas in terms of transition
23 to our plants to oil and then the environmental impacts
24 coming from that were too speculative to be able to be
25 analyzed by the Commission.

1 The reason we wanted more time, the reason we
2 asked for more was not to be dilatory. It was to show
3 that under certain conditions, when Otay operates, it
4 drives our plants on to bunker fuel oil. And we emit
5 bunker fuel oil and we go up against emission caps, annual
6 emission caps, and we douse the people in the south bay
7 and the people in Carlsbad with the effluent from bunker
8 fuel.

9 Now, the staff said it couldn't analyze that. It
10 was speculative. It didn't know how. We hired Robert
11 Weatherwax, who was the actual architect of the California
12 Energy Commission's modeling efforts to link up a cost --
13 a chronologic cost production model for its results and
14 then to have Gary Rubenstein of Sierra Research analyze
15 the emissions implications of that. And we simply didn't
16 have time to get that analysis done and get it into the
17 record and to be able to make the case as to what the
18 actual impacts were.

19 But I can tell you this, the applicant was
20 virtually signaling that a gas to oil transfer or
21 substitution was unheard of. It only happened once in ten
22 years other than testing, and we had an oil interruption
23 that day, where our plants went onto oil the very day we
24 held the hearing.

25 And, as you all know now, the system is

1 topsy-turvy now. It's not clear at all what's going on.
2 There's a Phase 1 today. There may be a Phase 2 today,
3 later today. The systems don't make sense. Lots of
4 plants are returning to service, and yet we're still
5 short. It's not clear what all the reasons are. I know
6 the Chairman has been struggling with that, both within
7 the State and nationally. But these are the kinds of
8 things, when you begin to rush the process, when you begin
9 to try to alleviate pressures and stress, sometimes the
10 projects that are coming along may induce or actually
11 exacerbate the situation.

12 And it's your responsibility to, basically,
13 understand those issues and to provide the analytical
14 context for them. And we're spending the money. We want
15 to do that. We want you to fully understand what the air
16 impacts are. The modeling is straight forward. There's
17 much more complex modeling that's been done by Dr.
18 Rosenfeld and by Commissioner -- Dr. Moore in their
19 various disciplines. It's a straight forward exercise.
20 It's done all the time, and it's not some kind of kabuki
21 or Ouiji Board approach. It's a straight ahead approach.
22 We use it ourselves in no-project alternative analysis all
23 the time.

24 So two things that we're asking you for, one we
25 would like you to rule that you do have jurisdiction and

1 an interest in a fundamental systems reliability. We'd
2 like you to, to the extent you feel, enrich the record in
3 that area. And then we'd like you to give us the
4 opportunity to complete our analysis done by the two of
5 the best experts in the State, put on your record for your
6 review, and then you can make the determination as you see
7 fit on the full and complete nature of the record.

8 That's all we're asking for. It probably will
9 take about three weeks to get this work done and into the
10 record. And we would like to be a able to enrich the
11 record to that extent.

12 As far as the record on the reliability and the
13 inability to make comments on it, I think there's enough
14 in the record that when we write our briefs that we can
15 give you the information. It would also be a Godsend to
16 be able to get some time to work on that issue as well,
17 but I think it is not as important as the issue on doing
18 the work on the substitution of gas to oil on the existing
19 plants.

20 I'd be happy to answer any questions from our
21 perspective.

22 CHAIRPERSON KEESE: I have one question. You
23 focused on air emissions as to something that we should
24 look at in reliability. Do you feel equally about any
25 transmission constraints that might result from a power

1 plant?

2 MR. VARANINI: Yes, the air --

3 CHAIRPERSON KEESE: That's something that when
4 the Commission is looking at a plant, it should look on
5 implications for congestion that would impact other power
6 plants?

7 MR. VARANINI: Yes. That would impact the
8 system. I think that you obviously look at those issues
9 when you go into your override mode. And we believe those
10 are -- the same issues are always relevant if they're
11 brought forward by a party or by an entity to show that
12 there's a negative impact. Just like you would analyze
13 positive impacts, you would analyze negative impacts.

14 In this particular case, there's a defined
15 negative impact from that plant coming on line given the
16 situation that we face in San Diego today on a
17 transmission basis.

18 CHAIRPERSON KEESE: So you're looking at a --
19 you're suggesting that we're looking at appropriate
20 reliability of the power plant and you think that we need
21 a much broader assessment of reliability to the system in
22 order to proceed with licensing a power plant?

23 MR. VARANINI: Right. You don't have enough gas
24 for the three plants that will be there when this plant is
25 built. And you don't have the pipes and you don't have

1 the wires.

2 CHAIRPERSON KEESE: How broad, do we study
3 natural gas situations? Do we study all the transmission
4 lines into the state? I mean, how broad are you
5 suggesting?

6 MR. VARANINI: I'd be happy to tell you. In the
7 case, what we said was, you haven't got enough gas pipes
8 to bring enough gas to feed these three plants. There are
9 three plants essentially with some peakers that serve San
10 Diego. It ain't got enough gas, and you can't get it
11 there, period, as of today without various improvements
12 being done that may or may not be accomplished.

13 Okay. So we raised the question, well, should
14 the applicant take -- would the applicant take a condition
15 that said we'll build the plant and we'll take the risk on
16 the new pipes. The answer was no, you can't finance it.

17 That's not a worldwide issue. That's not an
18 issue beyond the scope of the Commission. That's an issue
19 in San Diego County for God sakes.

20 CHAIRPERSON KEESE: I'm just asking how far you
21 think we should go.

22 MR. VARANINI: Well, I don't think I have to
23 answer that, because I can tell you you should go as far
24 as San Diego County in this case. It's in your
25 discretion. If it's between Alberta and Puerto Vallarta,

1 then you obviously would have a different context. But
2 this context has been presented like a sledge hammer in
3 the case. It's not a difficult conceptual situation.

4 The other thing is there are just no pipes there,
5 Commissioner. We can't get the gas there. You're
6 approving a plant that doesn't have an adequate supply of
7 primary energy. In three of your cases you've made, that
8 we looked at, and I'm pretty sure in all of them, every
9 case but this one there has been a decision that there is
10 enough primary energy to run the case. On Sutter,
11 Commissioner Moore did that. I believe, in your case
12 Commissioner, Mr. Chairman, you did it.

13 So we've gone through and tracked through the
14 other cases, and you've been able to make those findings.
15 And I would challenge anyone to make that finding here.
16 If you could make it, well then you can make the finding.
17 But it's really a very he peculiar and very localized
18 situation.

19 You haven't got wires north of Miguel, where this
20 plant connects to effectively manage the system in San
21 Diego county. And it's going to be a big problem. And
22 guess who people are going to remember made the decision
23 about this. It's one thing to say you're getting plants
24 on as fast as you can. I think the Commission is doing a
25 heroic job to get plants on. But I think at the same time

1 you have to be careful that you don't, in that rush to
2 move, that you don't make a mistake that ricochets back
3 and really causes severe problems in the region.

4 CHAIRPERSON KEESE: Thank you.

5 Do we have any other questions from the
6 Commissioners?

7 COMMISSIONER LAURIE: My Chairman. Mr. Varanini,
8 my understanding of your client's position, that your
9 concerns are that if Otay comes on line and uses the
10 portion of the gas supply that would otherwise go to
11 Cabrillo, Cabrillo because of other limitations, may, in
12 fact, not be permitted to operate; isn't that correct?

13 MR. VARANINI: That's partially correct, yes.

14 COMMISSIONER LAURIE: And that would be your
15 client's primary concern, would it not?

16 MR. VARANINI: Of course it is.

17 COMMISSIONER LAURIE: What is your understanding
18 of the rule -- if you were to state the Energy
19 Commission's rule that mandates that it study system
20 reliability, give me a quote and an end quote as to what
21 that rule would be?

22 MR. VARANINI: I think it's in the statute and
23 it's in our brief that you are to do no harm when you add
24 units to the electrical system that you are to enhance
25 reliability by deployment of these plants to the system.

1 COMMISSIONER LAURIE: That's all I have.

2 COMMISSIONER MOORE: Mr. Chairman.

3 CHAIRPERSON KEESE: Commissioner Moore.

4 COMMISSIONER MOORE: Yeah. I have a question for
5 Mr. Varanini. And I think it's more procedural than
6 anything else. Clearly, the kinds of concerns that you're
7 articulating are of interest to us, personally and
8 collectively. And I'm wondering how much the record
9 already reflects what those concerns are.

10 In other words, if you've been voicing this very
11 thing at the Committee hearings, and you've now put them
12 on -- without the detail, but you've now put them on the
13 record today, in front of us, and, in fact, the brief that
14 you've filed is I'm -- with the detail from Dr. Weatherwax
15 is available to the Committee today, how much of the
16 public record that already exists, in fact, reflects the
17 fact that you've submitted those, in your opinion?

18 MR. VARANINI: Well, we haven't submitted the
19 important analytical work that is a modeling exercise that
20 essentially does a chronologic elfin model to show in the
21 future how much and how many times the Otay machine will
22 push the other machines on to oil and run up against caps,
23 air caps and then be made inoperable.

24 Now, as Commissioner Laurie points out, of
25 course, we're concerned about running our plant. But what

1 you ought to be concerned about is whether the system can
2 work with AC physics if our plant isn't there.

3 Our plant pulls power down from San Onofre under
4 AC physics just like the South Bay plant has to run it
5 parallel with the new Otay plant, under reliability
6 criteria, and AC physics. So you can't simply take the
7 gas, split it into thirds and give it away on an equitable
8 basis. The system won't be reliable under that scenario.
9 And I can tell you right now the Committee doesn't have
10 any evidence and did not allow evidence on that scenario
11 in the proceeding.

12 COMMISSIONER MOORE: So right now what the
13 Committee has available to it in order to render a
14 decision are assertions by you and/or others regarding
15 reliability or the conflict in gas demand, but not the
16 analytics to back it up.

17 In other words, if they wrote the decisions this
18 instant, they could not -- if they believed your
19 assertions, they could not back it up with analytics that
20 would be able to point to a certain study or a certain set
21 of facts. You would maintain those --

22 MR. VARANINI: Commissioner, what we would put on
23 the record was a set of parametrics. We tried to use what
24 we learned from LVL and other centers of excellence. We
25 basically said, we haven't got time to do literally a

1 computer run to do the whole works. So we'll do a
2 boundary analysis.

3 The boundary analysis says, if we're curtailed
4 ten percent of the time, we're going to have an
5 environmental -- major environmental impact on an oil
6 shift. So we did do some parametric work. That work got
7 into the record, but it isn't definitive. The Committee
8 actually asked, at one point, for definitive information,
9 but they came up against the problem of a time problem and
10 the staff indicating that they didn't have the analytical
11 tools to get it done in that time frame.

12 COMMISSIONER MOORE: Let me turn to counsel for a
13 second. Mr. Chamberlain, if the Presiding Member's
14 Proposed Decision is out and there is a critique of it
15 including an analysis and criticism of the results, for
16 instance, the analytic study Dr. Weatherwax used as
17 evidence to argue against the Presiding Member's Proposed
18 Decision when it's in draft form out circulating, does
19 that constitute evidence presented into the record that
20 could be used at a later point by the Commission, as a
21 whole, when deciding whether or not to accept the
22 Presiding Member's Proposed Decision?

23 What I'm getting to is pretty obvious. I'm
24 wondering if, at this point, if the Committee has closed
25 off the public process because of timing or other

1 considerations, is there not one other avenue by which
2 evidence becomes public?

3 CHIEF COUNSEL CHAMBERLAIN: I believe a party can
4 always make an offer of proof to the full commission if it
5 desires to do so, if it has new evidence that ought to be
6 considered in response to the Presiding Member's report if
7 that's what you're suggesting?

8 COMMISSIONER MOORE: Let's say that Dr.
9 Weatherwax's report was presented as part of a critique
10 saying Presiding Member's Proposed Decision, whatever it
11 is, didn't go far enough because it didn't consider this.
12 But that report was not presented under oath, i.e. not
13 under the very constrained conditions in which we conduct
14 the Committee hearings. Is it devalued for that or is it
15 unacceptable for that?

16 CHIEF COUNSEL CHAMBERLAIN: It becomes part of
17 the hearing record as a comment. It is not evidence
18 unless the Commission decides to allow it to come in
19 subject to cross examination.

20 COMMISSIONER MOORE: Does that prevent the
21 Commission from using it in a decision?

22 CHIEF COUNSEL CHAMBERLAIN: If it is the only
23 evidence supporting a particular finding, then the
24 administrative law would suggest that the Commission would
25 be on weak grounds to try and make that finding. But if

1 it is only corroborative of other evidence, then the
2 Commission could use that to support the finding.

3 COMMISSIONER MOORE: So in the sense that
4 assertions have been made in the public record, probably
5 under oath, and then later a report comes in and backs up
6 those assertions, does that constitute corroborative
7 evidence?

8 CHIEF COUNSEL CHAMBERLAIN: It sounds like the
9 answer to your question is yes, but, you know, obviously
10 we'd have to look at the specific testimony or assertions
11 that have been made under oath.

12 COMMISSIONER MOORE: Thank you.

13 CHAIRPERSON KEESE: Thank you. We'll hear from
14 the applicant now.

15 MR. CARROLL: Good morning. My name is Mike
16 Carroll. I'm with the law firm of Latham and Watkins here
17 on behalf of the applicant. What we've just heard this
18 morning from Mr. Varanini is a statement of his client's
19 position on the substantive issues raised in their appeal.
20 Those of us who participated in the evidentiary hearings
21 on this matter have heard that statement many, many times
22 in many, many forms in the past.

23 We've heard it in the form of statements of
24 counsel from Mr. Varanini and his colleague. We've heard
25 it in the form of cross examination of witnesses. And

1 we've heard it in the form of extensive direct testimony
2 put into the record by the expert witnesses of Cabrillo.

3 When we cut through all of the hyperbole,
4 however, what's before us today is not whether Mr.
5 Varanini is right or wrong on the merits. We happen to
6 believe that he's wrong, but what's before you today is
7 whether or not they were presented with an adequate
8 opportunity to introduce into the record evidence on the
9 issues that they have raised in their appeals, those
10 being, first, the impacts of the project on electric
11 system reliability. And second, the potential for the
12 project to result in regional air quality impacts through
13 a chain of events starting with natural gas curtailment at
14 the Encina and South Bay facilities, followed by fuel oil
15 burns at those facilities, followed by increased emissions
16 associated with the fuel oil burns.

17 We've provided you with a detailed written filing
18 on this and I won't go over again the extensive evidence
19 and analysis that was done and presented during the
20 evidentiary hearings on those matters. Ms. Gefter has
21 done an excellent job this morning of giving you some of
22 the highlights. Those of you who were not at the
23 evidentiary hearings cannot fully appreciate the extent to
24 which those issues were analyzed and the extent to which
25 the record reflects analysis of those issues. But I think

1 that the summary presented by Ms. Gefter and the summary
2 presented in our written filing gives you some sense of
3 that.

4 With respect to the electric grid reliability
5 issue, Cabrillo would have you believe that the
6 Committee's order of November 28th precluded any
7 consideration of project impacts on electric grid
8 reliability. We think Cabrillo misreads the order. In
9 fact, what the order states is that issues that are not
10 relevant to the siting of this project and are not
11 relevant to this project's impacts on grid reliability
12 would not be considered.

13 If there's any questions in anyone's mind about
14 whether that was the meaning of the order, all you need to
15 do is look at the evidentiary record that followed and the
16 extensive evidence and the wide latitude that was given to
17 introduce evidence on those issues into the record.

18 A total of 15 witnesses, including multiple
19 witnesses from the CEC, San Diego Gas and Electric, CalISO
20 presented evidence on electric system reliability.
21 Cabrillo rigorously and extensively cross examined each
22 and every one of those witnesses. Cabrillo itself, as you
23 just heard, presented its own expert testimony -- its own
24 expert, Dr. Weatherwax, to provide testimony on that
25 issue.

1 With respect to the air quality issues raised in
2 the December 15th appeal, again, Cabrillo claims that it
3 did not have an opportunity to prepare and present
4 evidence. This is somewhat difficult to believe given
5 that Cabrillo was granted intervention status in this
6 matter 11 months prior to the time that the evidentiary
7 hearings commenced. We just heard Mr. Varanini say that
8 there is apparently a very simple model what can be run
9 quickly that will provide definitive evidence on this
10 issue.

11 If that's the case, it's somewhat difficult to
12 believe that Cabrillo didn't do that during the 11 months
13 preceding the evidentiary hearings during which it was an
14 active participant and intervenor in this matter. This
15 claim is even more incredible given the extensive
16 testimony that was presented on air quality issues by Mr.
17 Rubenstein, the expert presented by Cabrillo in air
18 quality issues.

19 In addition to Mr. Rubenstein, there was
20 extensive testimony on air quality from the CEC staff from
21 the San Diego Air Pollution Control District, from experts
22 from the applicant and also extensive expert testimony on
23 the gas supply issues which is related to the air quality
24 issues.

25 In short, as we've detailed in our brief, there's

1 been extensive analysis with respect to all of the issues
2 that have been raised in the appeals and that you've heard
3 Mr. Varanini talk about today. The record is complete
4 with evidence regarding these issues and the record should
5 remain closed in our view and the matter should proceed
6 with all due haste.

7 We believe this project has been thoroughly
8 analyzed. The substantive issues raised in the appeals
9 have been resolved to the satisfaction of the CEC staff
10 and all of the other parties involved with the exception
11 of the intervenors. The project has received unanimous
12 endorsement from the County Board of Supervisors and the
13 Governing Board of the Air Pollution Control District.

14 The record includes statements of support from
15 the County Supervisor in whose district the project will
16 be located, from the State's Legislator in whose district
17 the project is located, and from numerous other elected
18 and public officials.

19 To be blunt for a moment, the appellants are
20 direct competitors in the San Diego market with this
21 project. They stand to lose substantially should this
22 project come on line. Such generators have reaped
23 windfall profits recently as a result of the limited
24 supply of electric energy in San Diego. They know that if
25 they delay this project by even a few weeks, at this

1 point, that they can scuttle the applicant's plans to
2 bring the project on line by summer of 2003.

3 Now, what this means for intervenors is another
4 summer of record profits on the backs of the San Diego
5 consumers. And that's what these appeals are about,
6 that's what the requests for additional hearings are
7 about, that's what the recent request to postpone the PMPD
8 by 21 days are about. So make no doubt about it that the
9 concerns of the applicant are -- sorry, the concerns of
10 the appellant here are with its ability to have another
11 summer without the Otay Mesa project in competition in the
12 San Diego region.

13 We don't believe that those are legitimate
14 concerns or a legitimate basis for the Commission to delay
15 this project any further. We urge you to reject the
16 appeals and to allow the project to proceed.

17 Thank you very much.

18 CHAIRPERSON KEESE: Thank you, Mr. Carroll.

19 Staff.

20 STAFF COUNSEL OGATA: Thank you, Chairman Keese.
21 My name is Jeff Ogata. I'm staff counsel.

22 Staff believes that the two issues that were
23 raised by the appellant in this case are legitimate
24 issues. On one hand with respect to the Commission's
25 jurisdiction over the review of the electric system, we

1 believe that's an issue that the Commission should
2 determine, because it is a jurisdictional issue.

3 Staff, in this case, did the analysis that we
4 have been doing and we always do, which is to first
5 examine whether or not the project could be reliably
6 placed into service. And with that, we rely and we talk
7 to the CalISO as well as San Diego Gas and Electric in
8 this matter.

9 They both stated in reports that the project
10 needed to have some upgrades with respect to connection at
11 the first point of interconnection, and that beyond that,
12 that although the system needs some tweaking, as Mr.
13 Varanini, I think, indicated, that it was not the
14 responsibility of this particular project.

15 That is the reason staff did not analyze anything
16 further. Had the report indicated that upgrades were
17 required as a result of this project, staff would have
18 continued to analyze the environmental impacts of those
19 upgrades.

20 So with respect to that question, I believe that
21 is a question that the Commission should determine with
22 respect to jurisdiction. I think Chairman Keese, in terms
23 of your questions about how far do we go, I think those
24 are very appropriate questions. I think Commissioner
25 Laurie is also curious about how far do we go. And I

1 don't believe that our statute really indicates that we
2 have responsibility, at this time, to analyze the entire
3 system or how a particular project is going to impact the
4 system.

5 I believe staff's analysis is consistent with
6 what we have done in the past and I think it's reflected
7 directly at the impacts of this particular project, and
8 it's sufficient.

9 I also agree with Mr. Carroll, however, that
10 notwithstanding that, there was a lot of testimony about
11 how the system would operate with Otay included, and I
12 won't restate what Mr. Carroll said what -- you can go
13 into the record, if you need, to see whether or not there
14 was sufficient testimony in there. And I believe that
15 there was a lot of testimony with respect to the impacts.

16 With respect to the cumulative impacts of air
17 quality, the Committee asked staff on several occasions to
18 do a cumulative impact of the results of fuel oil burns
19 when there was a natural gas curtailment. Staff had
20 considered that matter several times. As I indicated to
21 the Committee, I think, on a couple of occasions, it
22 wasn't that we weren't aware of that, staff had looked at
23 that and decided that trying to determine a scenario or
24 scenarios that would not be speculative to do that
25 analysis was very difficult if not impossible.

1 There are so many factors to consider that trying
2 to come up with a scenario that wouldn't be attacked by
3 all parties as being incredible was simply not possible.
4 In fact, we attempted, based upon committee direction, to
5 try to come together with the parties to see if there
6 weren't some scenarios that we could all agree upon for
7 the purpose of doing an analysis. In fact, staff did that
8 analysis based upon some scenarios that had been used with
9 respect to analysis of the electric system reliability.

10 If Mr. Varanini is correct and that the model is
11 very easy to do, then I agree with Mr. Carroll, I wish we
12 could have seen that information a lot earlier. I think
13 staff was led to believe that trying to do that wasn't
14 going to be that simple. Staff believes it's not that
15 simple. And, in fact, if there is such a model that could
16 do that, I think we'd be very curious and happy to see
17 what that would be.

18 However, we do believe that in this case, this is
19 a matter for the committee's jurisdiction with respect to
20 determining whether or not the record is sufficient. I
21 believe the record is sufficient. I believe the Committee
22 has come to the conclusion that the record is sufficient
23 in that area and that this Commission should not over turn
24 that decision of Committee, since they were there. They
25 heard the evidence. I think they have a better

1 understanding on whether or not the record is clean on
2 that matter.

3 I believe, if the evidence could have been
4 provided in a simple way or even if that offer of proof
5 that Mr. Varanini would like to present could have been
6 attached to his filing so that we could all take a look at
7 it and see how relevant it is, that would have been very
8 helpful. At this point in time, I believe the time has
9 passed. The record has closed and I think there's
10 sufficient evidence on that issue.

11 COMMISSIONER MOORE: Mr. Chairman.

12 CHAIRPERSON KEESE: Commissioner Moore.

13 COMMISSIONER MOORE: Question for Mr. Ogata.
14 When you're talking about the CalISO rendering an opinion
15 about what tweaking, to use your term, needed to be done
16 to the system, was that with regard to the electricity
17 interconnect or did that take into account the gas line
18 extension as well or gas line capacity?

19 STAFF COUNSEL OGATA: I believe that was just the
20 interconnection.

21 COMMISSIONER MOORE: So you didn't have an
22 opinion from CalISO or some other jurisdictional body
23 about, from the public sector, about gas line availability
24 or capacity?

25 STAFF COUNSEL OGATA: We had information from San

1 Diego Gas and Electric about the natural gas situation,
2 yes.

3 COMMISSIONER MOORE: So the testimony on capacity
4 for the ability to serve any one of those three plants or
5 all three was put on the record by, in this case, the
6 principal purveyor in the area which is San Diego Gas and
7 Electric?

8 STAFF COUNSEL OGATA: Yes, there is evidence from
9 San Diego Gas and Electric. There is a lot of evidence
10 from the parties with respect to what would happen in
11 different situations under different scenarios.

12 COMMISSIONER MOORE: Thank you.

13 CHAIRPERSON KEESE: With the indulgence of the
14 Commission here, I believe we've heard the testimony today
15 and I believe --

16 Yes, I'm sorry. I missed that.

17 MS. LUCKHARDT: That's all right. I'll get
18 louder if you keep missing me.

19 (Laughter.)

20 CHAIRPERSON KEESE: I thought I had all the cards
21 up here, sorry about that.

22 MS. LUCKHARDT: That's all right. This is Jane
23 Luckhardt on behalf of Duke Energy North America. And
24 we're here today only in support of one of the motions
25 that Cabrillo has made, that being the motion regarding

1 air quality.

2 And it's kind of a difficult position that we
3 feel we're in right now, because there may be sufficient
4 evidence on the record to find potential or to find air
5 quality impacts due to increased oil burns. We operate
6 the South Bay Power Plant. And as that operator, we are
7 concerned about our ability to continue to operate. But I
8 want to dispel one of the presumptions that Mr. Carroll
9 made today, that we are simply here as an economic
10 competitor to block Otay Mesa from coming into the system
11 and operating and competing with us.

12 We are here because if we don't have enough gas,
13 we may have to burn fuel, which puts us into a position
14 where we're stuck between the air district on one hand
15 that rightfully has concerns about air quality in the San
16 Diego area and the CalISO, the Governor and the PUC on the
17 other. If we stop operating, as you heard in the State of
18 the State Address, the Governor wants to investigate why
19 we're not operating.

20 We've already had investigators show up at the
21 Oakland power plant, the Moss Landing power plant and the
22 South Bay power plant when they have been down for
23 maintenance, either scheduled or unforced outages.

24 And that's not a very fun position to be in for
25 us. We would like to be sure that we can operate whenever

1 the California system would like us to operate, and
2 whenever the market indicates that we should be in the
3 market running.

4 And so why we're here is to make sure that there
5 is sufficient gas so that we can run. And in our review
6 of the record to this point, there is a question here
7 about whether -- about which direction the Committee is
8 going to go in the proposed decision. And, of course no
9 one knows, at this time, except potentially the Committee
10 themselves, although they also may not have their decision
11 written at this time.

12 We find that it would be a bad outcome if the
13 Committee determined that there wasn't enough information
14 to say how often Encina and South Bay might be forced to
15 go to fuel oil as a result of Otay Mesa. And that if they
16 should make that decision and not allow the testimony that
17 Cabrillo would like to let in, in which they intend to
18 answer that very question, we think that would be a very
19 bad outcome.

20 And, in this instance, that's why we're here, and
21 that's our position, is we want to make sure that this
22 issue is fully fleshed out and fully addressed.

23 If the Committee takes the position that they
24 have enough information and they can determine that
25 additional fuel oil burns will occur or there's a

1 reasonable probability that they will occur, additional
2 air quality impacts will happen and that something needs
3 to be done, we don't need additional testimony to support
4 that at this time. But since we don't know which way
5 they're coming out, we feel that we must support
6 Cabrillo's request for additional modeling. And that's
7 our position, if you have any questions of me.

8 CHAIRPERSON KEESE: Any questions?

9 COMMISSIONER PERNELL: I have one question.

10 CHAIRPERSON KEESE: Okay, Robert -- Commissioner
11 Pernell.

12 COMMISSIONER PERNELL: Do you feel Cabrillo has
13 had enough time to present their case?

14 MR. LUCKHARDT: You know, it's really, I don't
15 think, in my place to comment on whether they've had
16 enough time or not had enough time. I substituted in as
17 counsel two weeks before hearings and, unfortunately, am
18 not in a position to really comment on the entire
19 proceeding, what happened before I came in.

20 COMMISSIONER PERNELL: Have you had enough time?
21 Has Duke had enough time to present its case as an
22 intervenor?

23 MS. LUCKHARDT: We, as representative, are
24 willing to meet any schedule the Committee presents and in
25 someone else's case. We have power plants pending before

1 the Commission and also appreciate expedited or at least
2 consistent treatment of our power plants, and so we feel
3 that we have presented the case that we wanted to present
4 in this case.

5 COMMISSIONER PERNELL: Thank you.

6 MR. BOYD: Mr. Chairman.

7 CHAIRPERSON KEESE: Mr. Boyd.

8 MR. BOYD: Well, I'm not a voting member of this
9 group, and I haven't taken the opportunity to dig real
10 deeply into this particular case. I must admit as a
11 thorough fan of total complete systems analysis, Mr.
12 Varanini's first presentation impacted me reasonably
13 heavily, but I, of course, remained quiet to listen to the
14 other points of view and just recognize that this
15 commission has a very difficult situation sitting before
16 it here now.

17 I don't want to stray into the legal questions of
18 process and procedure here. That has to be the
19 jurisdiction of counsel and I'm not going to question the
20 work the Committee has done, because I've been quite
21 impressed during the period of time I've sat here with the
22 thoroughness of Committee review.

23 But I have to weigh that against a lot of other
24 things that I've learned since I first came to work in the
25 Resources Agency in April of 1999 and got concerned about

1 energy. I was assured we were awash in natural gas and we
2 wouldn't face the problem for a long, long time. I also
3 was shown data over a period of months that indicated that
4 our energy crisis would be the summer of 2001 not the
5 winter of 2000/2001 and et cetera, et cetera, et cetera.

6 And I've been on the very disagreeable end of
7 discussions about, you know, what the generators may or
8 may not be doing to us in our State and, you know, all
9 kinds of allegations.

10 Therefore, it is very hard to take at face value
11 lots of the assumptions and what have you. And, as
12 indicated, we have should plenty of gas and then we've
13 been burning oil. And we should have plenty of generation
14 capacity in the dead of winter. And on a daily basis, we
15 face severe shortages. So we are looking at a very
16 strange world, a complete and total energy crisis as far
17 as I'm concerned. It's not just electricity. It's not
18 just natural gas, but, frankly, all forms of energy right
19 now.

20 So while we know we need the electrons and we
21 know, you know, how the market works and were to get out
22 there, the better chance we have of lowering the price. I
23 just hope that we have indeed gone to the extraordinary
24 depths that we have to go at this point in time to address
25 these systematic issues.

1 It's not desirable to stray outside of the narrow
2 definition, perhaps, of what you have to do in a siting
3 case, and I don't quite understand who's subordinate to
4 whom in the pecking order of receiving gas in that area.
5 And one of the questions of Commissioner Laurie to Mr.
6 Varanini relative to speaking for his client and their
7 concerns about getting gas, I'm not quite sure how you
8 divvy it up, but if the inferences that, you know, this is
9 the straw that breaks the camel's back in that area, that
10 is a concern about the areawide, systemwide validity of
11 the strength of the system. And it does get
12 disorganization into the natural gas and transmission
13 concerns arena that so many people are facing right now.

14 So I'm not necessarily going anywhere with this
15 comment. I'm just expressing my deep concern with a lot
16 of the issues that have been raised here today and my hope
17 that we can take, perhaps, utilizing skills of some of our
18 sister agencies as thorough a look as possible at some of
19 the questions that have been left on the table, because a
20 lot of people depend on the point of view of this
21 organization in a point in time when every given day
22 things change and people's assertions of what's going to
23 happen don't happen.

24 So all I do is complicate the question before
25 this commission. But I just felt I needed to say that I

1 share everybody's point of view here and concern and
2 probably will spend a little more time, if I can find it
3 to just share the concerns of my fellow Commissioners here
4 on this particular case, because I am quite concerned
5 about anything that pushes us into burning bunker oil
6 based on a long history of concerns about air quality.

7 I'm also concerned about the leveraging going on
8 with regard to gas supplies and the need for transmission
9 facilities and what have you. And we find ourselves
10 sitting here in this commission in the middle of this
11 issue. So this particular siting case raises a lot of big
12 questions that need to be addressed and they are now on
13 the back of this particular case for better or for worse.

14 CHAIRPERSON KEESE: Thank you, Mr. Boyd.

15 Thank you for your testimony.

16 That does get the issue to where I believe we
17 have to go next. And this is I believe that we as
18 Commissioners we are going to need to have private
19 discussions with our attorneys on where we are on this
20 matter. And so I, with your indulgence, would suggest is
21 that we will take this under submission, that we will meet
22 in executive session immediately thereafter or this
23 afternoon, if that works with our schedule, and that we
24 will then issue an order as soon as possible, no later
25 than the next Commission meeting.

1 COMMISSIONER LAURIE: And I would so move that
2 recommendation, Mr. Chairman.

3 COMMISSIONER PERNELL: Second.

4 CHAIRPERSON KEESE: Motion Commissioner Laurie,
5 second Commissioner Pernell.

6 All in favor?

7 (Ayes.)

8 CHAIRPERSON KEESE: Okay. Then we will take this
9 under submission and we will go into executive session
10 later to get advice of counsel on this issue, and to issue
11 an order as soon as we do that.

12 Item 14, Motion to Appoint. Possible Commission
13 consideration of Petitioner's motion to appoint a new
14 committee for the Metcalf proceeding.

15 Mr. Valkosky, we received a communication from
16 Mr. Robert Williams. Would you characterize it for us and
17 lay the ground work here.

18 MR. VALKOKSY: Okay. By way of background, in
19 late November, Mr. Robert Williams, an intervenor in the
20 Metcalf AFC proceeding filed a petition/motion essentially
21 requesting that a new siting case committee be appointed
22 to conduct the Metcalf proceedings.

23 It's a matter, I believe, that is properly before
24 the full Commission since under Public Resources Code
25 Section 25211 only the Commission may appoint a committee

1 to conduct the licensing proceedings. This item was
2 originally scheduled for the December 6th business
3 meeting, but due to a series of conflicts, accommodations
4 with Mr. Williams' schedule, it has been postponed until
5 today.

6 I believe Mr. Williams is here to further discuss
7 the relief he seeks in his motion.

8 Is there anything else?

9 CHAIRPERSON KEESE: I'm sorry, did you give me a
10 recommendation at the end or was that -- you laid the
11 groundwork.

12 Thank you, we'll hear from Mr. Williams then.

13 MR. WILLIAMS: Thank you, sir. Thank you, Mr.
14 Valkosky.

15 I'm Robert Williams. I'm a Registered
16 Professional Engineer in the state of California Nuclear
17 2026. I hold a degree in chemical engineering from
18 Stanford University, a masters in business administration
19 from Santa Clara University and an equivalent of Nuclear
20 Engineers Masters Degree from the General Electric
21 advanced engineering training program.

22 I have approximately 35 years of experience in
23 the power generation business, ten of it at General
24 Electric where I participated in design and licensing of
25 boiling water reactors, 20 years at EPRI, where I was

1 responsible for activities in the nuclear fuel cycle, many
2 of which involve regulatory proceedings and rule makings.

3 While I am not a lawyer, I have worked a
4 substantial part of my career, perhaps 20 years, providing
5 technical advice to attorneys in rulemakings related to
6 regulatory proceedings.

7 I come here with a somewhat heavy heart. I
8 admire and respect the Energy Commission and appreciate
9 the need for additional power supply. I'm an intervenor
10 in the Metcalf proceeding with great reluctance, because I
11 would much rather be building plants than opposing plants.
12 I felt honor bound to be here today, because I am
13 participating in this proceeding solely as a private
14 citizen at my own expense and out of a public spirit to
15 try to improve the regulatory process.

16 Now, it is with a very heavy heart that I feel
17 that I must pursue the allegation of bias on the part of
18 the Siting Committee. Now, because the -- I believe that
19 because of the press of the workload, the applications
20 that you're dealing with for 28 plants, I don't believe
21 that my petition, which has been pending since November
22 21st, was available in your briefing packets.

23 COMMISSIONER LAURIE: Mr. Williams, let me
24 interrupt for a moment. You made reference to bias on the
25 Siting Committee, are you referring to the Committee

1 hearing the case?

2 MR. WILLIAMS: Yes, indeed, the Metcalf Siting
3 Committee.

4 COMMISSIONER LAURIE: Then let's refer that to
5 the Metcalf Committee as opposed to the Commission's
6 in-house Siting Policy Committee.

7 MR. WILLIAMS: I'm not quite sure what you just
8 said.

9 CHAIRPERSON KEESE: We have a Siting Committee
10 also, so he's asking if you refer to it --

11 MR. WILLIAMS: Okay, yes. So my original
12 expectation was that this matter would be handled by the
13 Commission staff and that some sort of investigation would
14 be conducted by Mr. Larson, Mr. Therkelsen and the senior
15 staff of the Energy Commission.

16 I met with him briefly this morning and
17 discovered that no that that this is not the case, that,
18 as I said, I'm not an attorney. I've only been active
19 with the Energy Commission for about 18 months now, and I
20 am not totally familiar with your rules of practice or
21 proceedings. But I have general familiarity of the
22 principles of administrative law.

23 So I came here hoping that we could -- well, that
24 members of this Committee, the Commission would be
25 familiar with the allegations in my petition and that

1 there would have been some investigation, some contact
2 with Mr. Keese and Laurie regarding whether, in fact, what
3 I allege is the case.

4 But let me just try to summarize briefly, because
5 I'm aware that you were not provided with briefing
6 material.

7 I was particularly upset during the early
8 November time frame because of what appeared to be a
9 gratuitous opinion offered by the Siting Committee to the
10 City of San Jose. I believe the cover letter speaks for
11 itself. It's a cover letter issued by Commissioners
12 Laurie and Keese.

13 It says, "We, the Committee conducted
14 licensing proceedings on the Metcalf
15 Energy Center have asked our Chief
16 Counsel to prepare an opinion regarding
17 the City's use of the final staff
18 assessment for the City's forthcoming
19 entitlement actions. This opinion is
20 attached.

21 "We agree with our Chief Counsel's
22 opinion. Accordingly, we urge the City
23 of San Jose to use the final staff
24 assessment as the environmental document
25 of record in your proceeding."

1 Now, my brief explains, in more detail, why I
2 felt and, in fact, the attorney for the City of San Jose
3 felt, that the FSA, prior to evidentiary hearings, was not
4 suitable as a final EIS. And briefly that argument is
5 that your proceedings exclude an entire class of
6 participants, that is the formal intervenors. By holding
7 evidentiary hearings, you include then the opinions of
8 intervenors. But prior to that, having excluded an entire
9 class of intervenors, there is no way that the so-called
10 FSA can be viewed as a final EIS.

11 Now, the reason I make the allegation of bias is
12 that it appears that Commissioner's Laurie and Keese
13 believe that the evidentiary hearings will have no impact,
14 and that, in fact, they are being conducted only as a
15 proforma matter, because in the letter that they forward
16 to the counsel, they urge that the material that is
17 submitted be used for an action by the Planning
18 Commission.

19 Now, the record will show, and I have docketed
20 all of the references in my petition, and now I refer
21 particularly to pages 44 and 45 of the report of the City
22 Planning Commission staff, where the attorneys for the
23 City took the same position that I take in my brief. That
24 is, that the FSA, so-called, is not sufficiently final to
25 be a final EIR, and therefore cannot be used as the basis

1 for an affirmative action.

2 Now, the facts of the case are apparently relying
3 upon the submittal of Mr. Keese and Laurie. The Planning
4 Commission did, in fact, vote 5 to 2 to approve the
5 project. But then a two-week period passed and the City
6 Council of San Jose voted 11 to nothing to disapprove the
7 project. If you consult the record of the hearing and the
8 city of San Jose, they make no reference, whatsoever, to
9 the report of the Planning Commission. There was no
10 report of the vote or anything else. That was highly
11 unusual.

12 It is my personal conjecture that that is because
13 the City attorney believed that it was inappropriate to
14 take an affirmative action. A negative action was
15 appropriate, but an affirmative action was not
16 appropriate.

17 Irrespective of that and the facts of the case,
18 it strikes me as highly unusual that a judicial panel
19 should volunteer an opinion to the participants in a case.
20 And I have agonized over whether that is an issue of
21 sufficient import to challenge the integrity of
22 Commissioner's Keese and Laurie. I've agonized over that
23 clear to the hearings of the previous two days. Again, in
24 the past two hearings, and I urge the Committee to consult
25 the transcript of the first two days of evidentiary

1 hearings, Commissioner's Keese and Laurie clearly believe
2 that the outcome of the evidentiary hearings will be
3 affirmative for the applicant, and because of that, held
4 an extension of the prehearing conference to consider the
5 considerations under which the actions of the City Council
6 of San Jose would be subject to override.

7 Now, to be a little bit facetious, to add a
8 little bit of levity to the discussion here, this appears
9 to me to be analogous to a judge holding a murder trial,
10 being asked what do you think the outcome of the trial
11 will be. And his answer is well, I intend to conduct an
12 impartial trial, but later today, we will hold hearings on
13 whether to build an electric chair or gallows in the
14 backyard.

15 The mindset, and I think it's only a mindset, I
16 appreciate how much pressure you're under because of this
17 chaos generated by the imperfect deregulatory scheme to
18 license and construct power plants.

19 I believe that that pressure that the Commission
20 is under, I feel the same pressure from my friends who
21 say, "Bob, what are you doing opposing a power plant." I
22 believe that that pressure has resulted in a pro-applicant
23 tendency on the part of the Commissioners particularly in
24 this case.

25 Now, I would commend to you and then I have only

1 a few more comments, most of your proceedings here are
2 unopposed. My impression is that -- well, Deborah Rowan,
3 the Senator who is Chairman of the Senate, the State
4 Legislature's Energy Committee indicated on television the
5 other night that, you know, there were eight plants,
6 approximately, approved on -- I may have misremembered the
7 numbers, 13 that are still under consideration and Metcalf
8 was really the only plant with any serious opposition.

9 So I believe that you are getting a lot of good
10 input on your proceedings in your process in the Metcalf
11 hearing, and that you should try to conduct that hearing
12 with a judicial temperament, allowing the issues that
13 relate to siting, and building power plants in the cities
14 to be heard.

15 So with all due respect and recognizing that
16 these two Commissioners are the most senior and most
17 experienced members of the Commission, I nevertheless
18 respectfully request that they recuse themselves from the
19 Metcalf proceeding and that another Siting Committee be
20 appointed.

21 I'd be happy to answer any questions.

22 CHAIRPERSON KEESE: Thank you.

23 Do we have any questions here?

24 COMMISSIONER LAURIE: Mr. Chairman, if I may.
25 I'm sorry. First of all, I would note that it is Dr.

1 Moore that has the distinct honor of, I don't have any
2 questions, thank you, of being the most senior and
3 experienced member.

4 I think the issue that Mr. Williams raises is an
5 important one. The issue of bias is, in fact, a critical
6 question. We have a tremendous responsibility to the
7 public and to the people of the State to hold our process
8 in a fair and just manner, and the lack of bias or
9 prejudice by the decision makers is certainly a critical
10 element of that.

11 I would only seek to address the allegation
12 specifically raised by Mr. Williams, and that is an
13 allegation of bias based upon the fact that the Committee
14 hearing the case, that is Chairman Keese and myself,
15 communicated to the City under the question of the FSA.

16 The basis for that was the fact that this
17 project, by whom we've known from day one, has required
18 local government approvals, and staff had been in
19 negotiations with the City for many, many, many months as
20 to the process that would be followed in order to
21 accomplish that. And it had been agreed that the City was
22 going to use the FSA as their environmental document.

23 As the City began to engage in their public
24 hearing process, it was our understanding that the City
25 had changed its mind about utilization of that document.

1 It was the intention of our letter to simply remind the
2 City that, in our view, the FSA was, in fact, the proper
3 document to be utilized for that purpose. We did not
4 indicate to the City what we believed their outcome should
5 be upon review of that document.

6 Had the city voted to support the modifications
7 to its local land-use regulations as requested by the
8 applicant, then there would have been a legal basis upon
9 which opponents could have argued that a wrong document
10 was used and brought it forward to the judicial system.
11 The point being here is that the City chose not to accept
12 the applicant's desires, and, therefore, the FSA was
13 either not utilized or has become irrelevant.

14 But to suggest that a Committee action, which was
15 administrative in nature, seeking to ensure that the
16 process moved smoothly and in a timely fashion, is
17 prejudicial or shows bias, I must respectfully disagree.

18 I do not believe myself to be biased in this
19 case. I have not prejudged the outcome of this case.
20 Clearly, the issue of override will come up in this case.
21 The Committee, I think, properly determined, as a result,
22 it's appropriate to seek comment on it during the course
23 of our proceedings and we intend to do that.

24 Again, I believe that does not reflect a
25 prejudgment of the outcome of the issue.

1 That's all I have, Mr. Chairman.

2 COMMISSIONER MOORE: Mr. Chairman, I appreciate
3 Commissioner Laurie's comments. I think part of what's
4 happened here is that the appellant has misread a
5 procedural matter, a procedural decision and seen it as a
6 decision item or seen it as a reflection of bias, when, in
7 fact, our procedures clearly call for this kind of act to
8 be undertaken. And so it seems to me it's really just a
9 misunderstanding of the way we conduct business.

10 On the top I'd be very reluctant to oversee a
11 Committee's action, especially when that Committee has
12 been conducting so many hearings in the field and try and
13 prejudge whether or not they have a bias or not when they
14 haven't even rendered an opinion yet.

15 And as a consequence, it seems to me that given
16 the, kind of, fundamentalness understanding that's
17 represented, I think here and the stated intent of the
18 Committee, who has yet to issue an opinion for us, that
19 the appeal is not timely and not in order at this time.

20 I move to deny it.

21 Mr. Chairman, you have a motion on the floor.

22 COMMISSIONER LAURIE: Mr. Chairman, there's a
23 motion to deny.

24 CHAIRPERSON KEESE: Do we have a second?

25 COMMISSIONER PERNELL: Second, Mr. Chairman.

1 CHAIRPERSON KEESE: Motion and a second.

2 Counsel, are you waiving at me?

3 CHIEF COUNSEL CHAMBERLAIN: No, Mr. Chairman, I
4 don't believe I need to prolong the proceedings.

5 CHAIRPERSON KEESE: Thank you.

6 We have a motion and a second.

7 All in favor?

8 (Ayes.)

9 CHAIRPERSON KEESE: Opposed?
10 Motion denied.

11 Thank you.

12 MR. WILLIAMS: Could I just clarify. Did you and
13 Mr. Laurie vote on that action?

14 CHAIRPERSON KEESE: Yes, we did, I believe.

15 COMMISSIONER LAURIE: Let me ask.

16 CHAIRPERSON KEESE: You can abstain, if you want
17 to.

18 COMMISSIONER LAURIE: I'm not going to abstain if
19 he wants me to. I'll abstain if the law mandates me to?
20 Mr. Chamberlain, does the law mandate me to abstain on
21 this issue whether or not I believe I was biased?

22 CHIEF COUNSEL CHAMBERLAIN: I don't believe so,
23 Commissioner Laurie.

24 CHAIRPERSON KEESE: Thank you. Adopted five to
25 nothing.

1 I have to ask Commission Moore, a procedural
2 question -- logistical question. Commission Pernell has
3 got to leave -- you have a meeting with RDS.

4 COMMISSIONER MOORE: I believe that Art and I can
5 finish our business between 1:30 and 2:00 and be available
6 at 2:00.

7 CHAIRPERSON KEESE: We have no minutes today.
8 I'm going to announce an executive session at 2:00 p.m. in
9 my office to take up two legal matters. We'll take up the
10 Otay Mesa and we'll take up another legal matter that we
11 have.

12 CHIEF COUNSEL CHAMBERLAIN: There actually are
13 three, Mr. Chairman.

14 CHAIRPERSON KEESE: Take up a third legal matter.
15 Okay, that will be at 2:00 o'clock.

16 Energy Commission Committee on Oversight.
17 Chief Counsel's Report?

18 CHIEF COUNSEL CHAMBERLAIN: Mr. Chairman, I
19 believe I just gave it basically.

20 CHAIRPERSON KEESE: You have another matter for
21 executive session.

22 CHIEF COUNSEL CHAMBERLAIN: Given the time, I
23 don't believe there's anything further that I need to
24 report.

25 CHAIRPERSON KEESE: Thank you. Executive

1 Director's Report.

2 EXECUTIVE DIRECTOR LARSON: Nothing to report.

3 CHAIRPERSON KEESE: Wonderful. Public Adviser's
4 report. I think the Public Adviser may still be in a
5 meeting.

6 Nothing to report. Any public comment at this
7 point?

8 Hearing none, we will adjourn subject to
9 executive session at 2:00 p.m.

10 (Thereupon the Energy Commission meeting
11 was adjourned at 12:30 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing Energy Commission meeting was reported in
7 shorthand by me, James F. Peters, a Certified Shorthand
8 Reporter of the State of California, and thereafter
9 transcribed into typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said meeting nor in any
12 way interested in the outcome of said meeting.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 16th day of January, 2001.

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23 JAMES F. PETERS, CSR, RPR

24 Certified Shorthand Reporter

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